



Policy and Services Committee

6:00 PM
Special Meeting
Tuesday, February 14, 2012
Council Conference Room
Palo Alto City Hall
250 Hamilton Avenue
Palo Alto, CA

Roll Call

Oral Communications

Agenda Items

1. Request Policy and Services Committee Review of the Proposed Ordinance Changes to Section 4.54, Massage Establishments
2. Labor Guiding Principles

Future Meetings and Agendas

Adjournment

AMERICANS WITH DISABILITY ACT (ADA)

Persons with disabilities who require auxiliary aids or services in using City facilities, services or programs or who would like information on the City's compliance with the Americans with Disabilities Act (ADA) of 1990, may contact (650) 329-2550 (Voice) 24 hours in advance.

PUBLIC COMMENT

Members of the Public are entitled to directly address the City Council/Committee concerning any item that is described in the notice of this meeting, before or during consideration of that item. If you wish to address the Council/Committee on any issue that is on this agenda, please complete a speaker request card located on the table at the entrance to the Council Chambers, and deliver it to the City Clerk prior to discussion of the item. You are not required to give your name on the speaker card in order to speak to the Council/Committee, but it is very helpful.

City of Palo Alto

Policy and Services Committee Staff Report

(ID # 2287)

Report Type: Meeting Date: 2/14/2012

Summary Title: Massage Ordinance Revision

Title: Request Policy and Services Committee Review of the Proposed Ordinance Changes to Section 4.54, Massage Establishments

From: City Manager

Lead Department: Police

Recommendation

Staff requests that the Policy and Services Committee review the proposed updated Massage Ordinance and recommend passage of the ordinance to City Council.

Background

The City of Palo Alto enacted the current massage ordinance, Palo Alto Municipal Code (PAMC) Section 4.54, to regulate the location of and ensure the lawful commerce of massage businesses in Palo Alto. The ordinance was enacted in 1974 (Attachment A). The Police Department has been responsible for compliance with and enforcement of that ordinance. In 1996, in anticipation of pending State legislation and oversight, the City of Palo Alto suspended enforcement of the massage ordinance. For a variety of reasons, the anticipated State legislation was not passed until 2009. During the interim period, the City of Palo Alto informed massage applicants and previously permitted therapists of the ordinance suspension (Attachment B).

The Police Department's Code Enforcement Officer is responsible for massage permitting and compliance with the ordinance. The Police Department recently revisited the ordinance and State regulations. The review included research into the number of massage practitioners in Palo Alto and a comparison of Palo Alto's ordinance with other municipalities' ordinances and with the State regulations and requirements. The Police Department reviewed the massage municipal ordinances of Belmont, San Mateo, Los Gatos, Redwood City, Burlingame, Foster City, Mountain View, and Millbrae.

There are 195 massage therapists currently working in the City, 111 of whom are CAMTC certified. Sample research to gauge the current number of unpermitted massage therapists in Palo Alto revealed that the California Avenue business area had approximately 24 unregulated therapists. A number of those therapists are working without permits in solo establishments, in violation of the suspended ordinance. There are currently three businesses within Palo Alto that are permitted as massage establishments; Watercourse Way, Body Kneads, and Massage

Therapy Center. There are four similar businesses in Palo Alto that are not permitted as massage establishments: Equinox, La Belle Day Spa, Destino Spa, and Happy Feet.

The Police Department contacted the California Massage Therapy Council (CAMTC) for their regulations on massage therapy. The CAMTC is a public nonprofit benefit corporation established by the State legislature in 2009 to regulate massage practice. Based on the CAMTC regulations and the ordinances of other municipalities, the Police Department and City Attorney's Office determined it was necessary to redraft major portions of the City's existing ordinance. These recommended changes include adding an additional massage therapist classification, and suggesting changes to permitting fees. The proposed fee adjustments are consistent with the fees charged by other major cities within Santa Clara County and adjacent counties.

State Legislation

Senate Bill 731 and Business and Professions Code 4600

Senate Bill (SB) 731, adopted in September 2009, enacted legislation impacting the ability of municipalities to regulate massage establishments (Attachment C). It also created a public nonprofit benefit corporation, the California Massage Therapy Council (CAMTC), and authorized CAMTC to regulate and standardize the issuance of massage therapist and practitioner certificates throughout the state. SB 731 prohibited any city or county from enacting ordinances regulating the practice of massage by CAMTC certificate holders. Under SB 731, persons who apply for and are granted a massage therapist or practitioner certificate are exempt from any local ordinances regulating massage. Under State Law (B&P section 4612), massage practitioners with a valid state certificate may practice massage in any jurisdiction, without having to obtain additional permits from any local regulating body (Attachment D). In addition, the code prohibits local regulating bodies from adding massage specific regulations to massage businesses operated by CAMTC certificate holders. The intent of the bill is to provide uniform regulations statewide and to eliminate the disparate treatment of massage establishments. The code allows local jurisdictions to adopt reasonable health and safety requirements for massage establishments and provides the authority for local jurisdictions to establish an application process for massage practitioners and establishments that choose not to certify through CAMTC. The City of Palo Alto's existing massage ordinance is not consistent with Senate Bill 731 and includes requirements that are prohibited by SB 731.

Assembly Bill 619, approved by the Governor August 3, 2011

On January 1, 2012, new legislation went into effect (AB 619), amending SB 731 and expanding the ability of the CAMTC to enact regulatory powers over certified massage practitioners and therapists. AB 619 changed some of the CAMTC certification renewal dates, required certificate holders to display their certificates and removed some certificate holder liability.

CAMTC Guidelines

Business and Professions Code 4600 establishes the CAMTC guidelines for two separate classifications for massage workers: Massage Practitioner and Massage Therapist. The application and certification process for both certifications require education hours in excess of what the City of Palo Alto's suspended massage ordinance currently requires. The CAMTC contracts with investigators to carefully review the background and qualifications of each applicant prior to approving certification. The following is the criteria for certification by the CAMTC:

4601(a) Massage practitioner:

- The applicant must be 18 years or older.
- Must have successfully completed 250 hours of education from a CAMTC approved school.
- Provide proof of official tax returns.
- Pass a DOJ and FBI background check.
- Have no disqualifying criminal history.

4601(c) Massage Therapist:

- The applicant must be 18 years or older.
- Must have successfully completed from a CAMTC approved school 500 hours of education.
- Must pass a massage and bodywork competency assessment test.
- Provide proof of official tax returns.
- Pass a DOJ and FBI background check.
- Have no disqualifying criminal history.

State Law Summary

| ALLOWED | PROHIBITED |
|---|--|
| Local agency may verify information and receive the state certificate holder's history from CAMTC. | Local agency cannot require CAMTC certified massage therapists to obtain a license, permit or other authorization to practice massage. |
| Local agency may adopt reasonable health and safety requirements, i.e., cleanliness of massage rooms, towels and linens, reasonable attire and personal hygiene for persons providing massage services providing it does not impose additional qualifications such as medical exams, background checks or other criteria. | Local agency cannot enact ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits or zoning requirements that are different than those requirements that are uniformly applied to all individuals and businesses providing professional services. |
| Local agency may require file copies or other evidence of state certification and must have on premise for review. | Local agency cannot enact or enforce existing local building code or physical facility requirements that do not uniformly apply to other professional or personal service |

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| | businesses. |
| Local agency may require owner or operator to be responsible for conduct of all employees or independent contractors working on premises of the business, and revoke, or suspend for violations on the premises. | Local agency cannot require unlocked doors when there is no staff available to ensure security for clients and massage staff who are behind closed doors or require windows that provide a view into the rooms that interfere with the privacy of clients of the massage business. |
| Local agency may conduct reasonable inspections. | |
| Local agency may require the owner/operator to notify the city of any change to name, management or conveyance of the business to another person. | |
| Local agency can require a background check on an owner who owns more than 5% of the business and is not state certified. | |

The intention of the state law is to enable consumers to identify legitimate and professional massage therapists and businesses by establishing certain standards and requiring background checks and fingerprinting. In addition, the CAMTC investigates and approves schools of massage that meet CAMTC criteria. CAMTC maintains a list of "suspect" schools and has authority to deny or revoke certifications.

Other Municipal Massage Ordinances

Other local cities and counties such as Redwood City and the San Mateo County Sheriff's Office are currently updating their municipal codes relating to massage to comply with SB 731 and AB 619. Other municipalities such as the Cities of San Mateo, Foster City, Belmont, and Burlingame continue to operate with their existing city processes and exempt CAMTC certified therapists, practitioners, and establishments from city regulations. A summary of local municipalities' massage ordinances follows:

- Santa Rosa, San Rafael, and San Carlos have adopted ordinances that remove the option for city permits and require all massage therapists in their respective jurisdictions to be CAMTC certified. Redwood City and the San Mateo County Sheriff's office are considering similar ordinances.
- Los Gatos recently adopted an ordinance allowing for two methods of obtaining a permit. This system provides the option of two complying permits; either through CAMTC or through the local permitting process.
- Sunnyvale adopted a similar ordinance. Massage practitioners have two options to comply with the ordinance. They can obtain a massage license issued by the director of public safety by meeting City certification requirements or obtain certification

through the CAMTC process. The Sunnyvale ordinance requires a higher minimum of liability coverage than surrounding cities.

- Mountain View recently updated its massage ordinance which also allows two methods of obtaining a massage permit. Mountain View has included unique establishment and practitioner classifications in its massage ordinance that have specific requirements. The classifications are “Non-certified Massage Permit” and “Non-certified Massage Establishment Practitioner.” Mountain View’s defines a non-certified massage practitioner as a massage practitioner who performs massage in an open and common room without partitions, and the individual in receipt of the massage remains fully clothed and does not disrobe except below the knee. Non-certified massage establishments are defined as establishments that employ exclusively non-certified practitioners. Other than this exemption, the same requirements applicable to normal massage establishments apply to non-certified massage establishments.

Discussion

The City of Palo Alto’s proposed massage ordinance has been revised to comply with current state laws, including revised municipal fees for permits and provides the option of a local permitting process as an alternative to CAMTC certification.

City of Palo Alto Massage Ordinance Proposal

The City of Palo Alto Massage Ordinance provides for the orderly regulation of massage establishments and massage technicians in the interests of the public health, safety, and welfare by providing certain minimum qualifications for the operators of massage establishments and for massage technicians and trainees. Staff’s proposed ordinance allows two methods for certification. Massage practitioners can obtain a CAMTC certificate, which will permit them to operate without additional requirements or certification. Those practitioners who do not obtain CAMTC certification can obtain a permit from the City.

The proposed ordinance mandates non-CAMTC certified applicants obtain a DOJ fingerprint check and criminal history check. Non-CAMTC applicants must have minimum education hours from an accredited school. The proposed ordinance has less stringent requirements for City applicants than the requirements of CAMTC. The educational hours for a City permit are 200; CAMTC requires either 250 or 500 hours depending on certification level. A grace period of 18 months will be granted to previously permitted Palo Alto therapists to allow the therapists to meet the required additional education. The proposed ordinance would require massage therapists to receive education from schools accredited by the Bureau for Private Post Secondary Education, a government institution of the Department of Consumer Affairs.

The City of Palo Alto proposed massage ordinance (Attachment F) encompasses the following changes to the 1974 ordinance:

- Adds language to exempt CAMTC certificate holders from obtaining an additional City massage permit.
- Increases the education hours (from an accredited school) required for therapists from the current 100 hours to 200 hours.
- Creates a new category of establishment, a sole proprietor, allowing a single person massage business to operate at a fixed location and reduces establishment fees.
- Adds the requirement of malpractice insurance, a minimum of \$100,000 liability by all establishments, sole proprietors, and businesses supporting accessory massage technicians.
- Adds the requirement that massage technician permits be on display in a conspicuous location in all establishments.
- Requires all establishments to maintain limited client records including contact information, to be furnished upon court order to investigating City officials.
- Eliminates any special building requirements for massage establishments, as required by SB 731.
- Eliminates zoning requirements specifically targeting massage establishments.
- Adds the ability to deny massage technician permit issuance to any person the CAMTC has previously revoked, suspended, or denied.

Permitting fees were determined by estimating staff time required for the permitting process and a survey of surrounding agencies' fees (Attachment G). The City of Palo Alto's review of those fees concluded that reasonable annual massage therapist and establishment rates for the City are as follows:

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|---|-----------------|
| Massage Establishments (New) \$750 | (Renewal) \$450 |
| Sole Proprietor establishment (New) \$350 | (Renewal) \$150 |
| Massage Technician (New) \$300 | (Renewal) \$150 |

Community Discussion

Following the creation of the draft ordinance, police staff posted the draft ordinance on the City's website. Staff invited massage therapists and establishment proprietors operating in Palo Alto to a series of community meetings. The two meetings were attended by police staff and the Assistant City Attorney on April 5, 2011 and June 2, 2011. A CAMTC Board Member attended the June 2nd meeting. On May 18, 2011, Police Department staff held a multi-jurisdictional meeting with the CAMTC board members and staff from other municipalities to clarify the intent and reading of SB 731. The following paragraphs outline the specific meeting dates and discussion.

April 4, 2011- Meeting with Watercourse Way Representatives

Police Department staff met with the business owner and an administrator from Watercourse Way (WCW), a massage establishment in Palo Alto. WCW staff expressed concerns about the

potential impact the updated massage ordinance would have on their business. WCW staff felt that the ordinance did not comply with B&P 4601 as it was written and that it was unfairly targeting their business. WCW staff thought the fees were unfair and questioned why they were going to be assessed after 15 years of no enforcement. WCW staff was also concerned about the change in zoning ordinances for massage business and the possibility of additional competition. Department staff noted all of the concerns and WCW representatives were included in subsequent discussions and review of the draft ordinance.

Community Meeting on April 5, 2011

On April 5, 2011, a general community meeting was held in the Council Chambers to discuss the draft ordinance. The meeting was attended by police staff and the Assistant City Attorney. Approximately 60-70 persons, many of whom were practitioners, attended the meeting. The proposed changes to the ordinance were read aloud for the community members. Staff explained the reasons for updating the ordinance and acknowledged that considerable time had passed since the City stopped assessing fees for massage permitting and enforcing of the existing ordinance. Staff explained the review process of other municipal ordinances and the research conducted into new State laws regulating the massage industry. Staff also supplied printed copies of the draft ordinance.

Community members voiced a number of concerns during the meeting. A principal concern with the initial draft was a requirement that all establishments must maintain a "log book," recording information about the client including contact information, services rendered, and date and time of service, to be furnished to Police personnel upon request. Other municipalities have this requirement to assist in criminal investigations. Massage establishment proprietors challenged the legality of the log book. Community members also wanted to eliminate the requirement of a citizen needing a physician's note to allow in-home or "outcall" massage practice, feeling it was an undue burden on the therapist and client. In addition, some practitioners did not think it was necessary to have to provide a locked receptacle for securing client's personal items. Members requested a "grandfather" provision, waiving additional education requirements for therapists currently permitted with the City. Staff assured the community members that all of their input and concerns would be considered before a final draft of the ordinance was authored.

May 5, 2011 meeting with Happy Feet owner

Police Department staff met with the owner of Happy Feet in Palo Alto, Mr. Bertlesen. Happy Feet is an unpermitted massage establishment that offers low cost full body massage with the clients fully clothed. Mr. Bertlesen does not feel that his business of "reflexology" and "foot massage" met the definition of "massage" as defined in the City's ordinance. Mr. Bertlesen believes that his employees should be exempt from meeting the education requirements of the ordinance and that they should not have to be permitted as massage technicians with the City. His employees are not CAMTC certified. Happy Feet employees do not have any verifiable education in massage technique. Mr. Bertlesen stated the employees of Happy Feet are paid

low wages, and only for the actual time they spend doing massage. Happy Feet's business model keeps his low-cost massage business operating, and Mr. Bertlesen stated if his employees were required to meet certification standards they would leave his business for other employment. Staff listened to Mr. Bertlesen's concerns and reviewed the definition of "massage" with him. The hands-on nature of the full body massage that Happy Feet provides clearly puts the business within the category of a massage establishment. Staff discussed the possibility of allowing an exemption for a foot massage only business. Staff advised Mr. Bertlesen that if his business provided full body massage the therapists would be required to meet the certification standards in the ordinance. Staff offered suggestions such as allowing extra time for him to bring in a CAMTC certified trainer who spoke other languages, so that his staff could meet the education requirements of the City's ordinance.

May 18, 2011- Multi-Jurisdictional CAMTC Meeting

In order to fully understand and comply with SB 731 regulations, police staff organized a meeting with CAMTC board members to explain the State Council's purpose and regulatory function. Representatives from other cities were invited to the meeting and were in attendance. The CAMTC board members clarified how municipalities can enforce their own massage ordinances. The CAMTC recommended the option that cities adopt a rule to only allow CAMTC certified practitioners and therapists to operate within their jurisdiction. That option would allow for very little oversight and regulation as CAMTC certificate holders are exempt from the City permit process to practice massage. The CAMTC also has stringent education guidelines, completes thorough background checks, and has the ability to suspend or revoke certifications upon validated complaints. The requirements for CAMTC certification are more stringent than the proposed City ordinance. If the City of Palo Alto adopted an ordinance that only CAMTC certified therapists work within the city approximately 50 percent of the current therapists would not be able to work until they gained the required certification.

May 19, 2011 and May 26, 2011- Small Group Massage Therapist Meetings

Staff met one on one with therapists representing large businesses, as well as sole-proprietorships. The meetings were held to discuss areas of contention and to review an updated draft of the ordinance. The topics of discussions included displaying photographs of the permit holders, appropriate closing times for establishments, and outcall issues.

Final Draft changes

Following the community meetings, the meeting with CAMTC, and the one on one meeting with massage therapists, staff re-visited several major portions of the draft ordinance. The ordinance was changed taking into consideration the concerns of the massage practitioners and business owners. The following changes were made:

- Logbooks: Many cities require massage establishments to maintain client records reflecting type of service rendered and basic client contact information. The records are supposed to be made available for law enforcement inspection upon the complaint of criminal activity that may have occurred at the establishment, to aid in the investigation. The logbook mandate is a legal request from municipalities. In order to address privacy concerns, the proposed ordinance requires that client information be recorded in some manner; however the information would be made available to law enforcement personnel only pursuant to a court order.
- Education: The existing ordinance required 100 hours of education prior to permit issuance. That requirement is far below the 500 hours required of CAMTC certified therapists and well below the requirements of other comparable municipalities. The proposed ordinance requires 200 hours of education. A grace period of 18 months would be granted to previously permitted therapists to allow the therapists to meet the required additional education. The staff recommendation is acceptable to most members of the massage community.
- Definition: Staff recommends keeping the definition of “massage establishment” as follows; “Massage establishment” means any establishment with more than one massage technician having a fixed place of business where any firm, association, partnership, corporation, joint venture or combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on massages, baths, or health treatments involving massage or baths, where massage is part of primary function of the business. Only one currently unpermitted establishment disagreed with this definition, contending that full body massage with clothing on did not fall under the category of a massage establishment.
- Wording: The massage community at large felt the wording in previous drafts was unclear in respect to differentiating between state certification and city permits. Staff made changes to the ordinance to clearly establish that state certified massage therapists and technicians were exempt from City permitting requirements.
- Ability to Deny Permit: In section 4.54.030, staff added the ability to deny permit issuance if a person had previously been revoked, suspended, or denied a permit from the CAMTC. No persons contested this addition.
- Photos: The original draft ordinance contained a provision mandating permit holders display their City massage technician permit with photograph at their place of work for clients to view (CAMTC certified persons must do this). Community members commented that they felt the photo requirement was unfair and that clients may see photos and choose a therapist based on their appearance. Staff agreed the establishments can meet this requirement of public display by maintaining a permit binder to be furnished upon client request.
- Outcall: Staff recommends that the City not issue permits to allow massage practitioners to perform “outcall massage.”. This is consistent with the current practices of many municipalities. The existing ordinance allowed outcall only with a doctor’s prescription. This exception rarely occurred and proved difficult for City staff to verify. Staff

recommends prohibiting outcall for all City-permitted therapists and allowing outcall for state-certified therapists in accordance with state law.

Second Community Meeting- June 2, 2011

Staff held a second community meeting to address issues with the updated draft ordinance. Community members were able to review the draft prior to the meeting. Staff reviewed the areas of discussion and highlighted the changes. There was little discussion or questions after the review of the final draft.

Options for Regulating Massage

Staff has drafted a proposed ordinance that brings it into compliance with State Law. The City has several options on how it may regulate massage practice. Those options are:

1. Allow CAMTC certified workers and businesses only. The benefits of this approach would allow for consistency among workers and businesses as to rules and regulations. The City would be unable to regulate such workers and businesses differently than other professional services. In Palo Alto, 50 percent of persons operating as permitted massage therapists do not have state certification. Staff believes having a state certification only policy is unfair to current practitioners that have been working for years in the City without state certification. The three current establishments in Palo Alto are not state certified. Under existing state law, a worker would have had until January 1, 2012 to demonstrate that they have the equivalent experience and education to justify certification without meeting the 250-500 hour requirement from an approved school, pass the background process, and pay state fees. The massage community of Palo Alto was not in favor of this approach, as many persons would be unable remain working in the city due to the amount of time it takes to receive approved education and complete the state certification process.
2. Create a hybrid approach with one set of regulations for City permitted workers and businesses and a separate set of regulations for CAMTC certified workers and businesses. This allows the City to retain its authority over those workers and businesses that do not become state certified and allows the City to retain authority in limited areas over state certified workers and businesses. The disadvantage of this approach is that it is cumbersome, creates additional work, and causes potential confusion between the two processes.
3. Continue with the existing City process, with modification for state regulations, and exempt CAMTC certified workers and establishments from the City regulation. The benefit of this approach is that it is simple and involves no substantial change to existing city law, with the exception of the state-mandated changes. This allows for currently working therapists to continue working in Palo Alto as they have been, after obtaining a City permit.

Recommendation

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Staff recommends the adoption of Option #3.

Staff recommends updating the existing ordinance to comply with state law. This is the best option for both the City and the therapists who work in Palo Alto. The community meetings provided the opportunity for the massage community to have input and voice concerns about the proposed changes to the ordinance. Those concerns were identified, vetted, and addressed in the follow-up community meetings and the one-on-one meetings with community members. Individual members of the massage community assisted in the final review of the proposed ordinance. The proposed ordinance was revised with consideration of the input from the meeting participants. The proposed ordinance recognizes the needs of the massage community and represents compromise by the City and the massage community.

The proposed ordinance recognizes and allows the practice of massage therapy in the City of Palo Alto. The ordinance allows existing massage technicians and establishments to continue doing business, and provides a reasonable timeline for therapists to comply with the educational requirements of the ordinance. The intent of the ordinance is to ensure that those who offer massage services are qualified, trained, and conduct their work in a lawful and professional manner. Persons who choose to patronize the therapists within Palo Alto can have confidence that the therapists have successfully met standardized qualifications. The proposed ordinance is consistent with other local municipalities and State standards. The ordinance also allows greater flexibility for business persons to operate within the City in a safe and reasonable manner. The passage of the proposed ordinance will allow the City to resume consistent enforcement of massage practice within Palo Alto.

Resource Impact

The passage of the proposed ordinance will require considerable staff time to get all current therapists permitted and sole proprietorships and establishments permitted/inspected. The ordinance establishes a grace period of 18 months for educational requirements and 60 days for massage establishments to become compliant. The ordinance requires annual inspections by a Police Department staff member that can be completed within the existing job classification of Code Enforcement Officer and within the existing Police Department budget. Larry Perlin, from the Planning Department, was consulted and a building inspector will be notified of inspection times and days so they may send a representative when available. Staff costs will be recovered through the collection of permit fees.

Attachments:

- Attachment A - PAMC 4.54 (PDF)
- Attachment B - Temp Permit (PDF)
- Attachment C - SB 731 (PDF)

- Attachment D - B&P Code 10.5 (PDF)
- Attachment E - AB 619 (PDF)
- Attachment F - Proposed PAMC 4.54 (PDF)
- Attachment G - Other Cities' Fees (PDF)
- Attachment H - Letters to Council re Massage Ordinance 020812 (PDF)

Prepared By: April Wagner, Police Lieutenant

Department Head: Dennis Burns, Police Chief

City Manager Approval:


James Keene, City Manager

Palo Alto Municipal Code

Chapter 4.54
MESSAGE ESTABLISHMENTS

Sections:

- 4.54.010 Purpose and intent.
- 4.54.020 Definitions.
- 4.54.030 Massage establishment license required.
- 4.54.040 Massage establishment license application fee.
- 4.54.050 Application for massage establishment license.
- 4.54.060 Massage technician permit required.
- 4.54.070 Massage technician application fee.
- 4.54.080 Application for massage technician permit.
- 4.54.090 Massage technician trainee.
- 4.54.100 Appeal.
- 4.54.110 Massage establishment facilities and operations requirements.
- 4.54.120 Inspection by officials.
- 4.54.130 Business name.
- 4.54.140 Business location change.
- 4.54.150 Sale or transfer of massage establishment interest.
- 4.54.160 Display of permits, licenses.
- 4.54.170 Exemptions.
- 4.54.180 Grounds for denial, probation, and disciplinary action.
- 4.54.190 Hearing.
- 4.54.200 Application to existing establishments and technicians.

4.54.210 Application of other code provisions.

4.54.010 Purpose and intent.

It is the purpose and intent of this chapter to provide for the orderly regulation of massage establishments and massage technicians, as defined in this chapter, in the interests of the public health, safety and welfare by providing certain minimum building, sanitation and health standards for massage establishments, and by providing certain minimum qualifications for the operators of massage establishments and for massage technicians and massage technician trainees.

(Ord. 2833 § 1 (part), 1974)

4.54.020 Definitions.

(a) For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this section shall have the meanings given them in this section:

(1) "Massage" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.

(2) "Massage establishment" means any establishment having a fixed place of business where any individual, firm, association, partnership, corporation, joint venture or combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on massages, baths or health treatments involving massage or baths as the principal functions.

(3) "Massage technician" means any person who administers massages, baths or health treatments involving massages or baths as the principal functions to another person for any consideration whatsoever.

(4) "Recognized school of massage" means any school or institution of learning which teaches the theory, ethics, practice, profession and work of massage, which school or institution of learning requires a residence course of study of not fewer than seventy hours to be given in not more than three calendar months before the student shall be furnished with a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning, and which school has been approved pursuant to California Education Code Section 29025, or, if said school is not located in California, has complied with standards commensurate with those required in said Section 29025. Any school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class, or courses of a massage technician not approved by the California State Department of Education shall not be deemed a "recognized school of massage."

(5) "License" means the business license to operate a massage establishment as required by this chapter.

(6) "Permit" means the permit to engage in the activities of a massage technician or a massage technician trainee as required by this chapter.

(7) "Person" means any individual, firm, association, partnership, corporation, joint venture or combination of individuals.

(Ord. 2833 § 1 (part), 1974)

4.54.030 Massage establishment license required.

(a) It is unlawful for any person to engage in, conduct or carry on, in or upon any premises within the city the operation of massage establishment without the license obtained from the chief of police as required by this chapter. A massage establishment license shall be issued to any person who has complied with the requirements of Sections 4.54.050 and 4.54.110 of this chapter, and all other applicable provisions of this code; unless grounds for denial of such license are found to exist. In addition to those set forth in Section 4.04.140, grounds for denial include:

(1) The applicant made a material misstatement in the application for a license;

(2) The applicant has, within five years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or any violations of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d), or 647(h) of the California Penal Code, or of any offense involving theft of property or violence;

(3) That the operation of a massage establishment, as proposed by the applicant if permitted, would not comply with all applicable laws including, but not limited to, all city ordinances and regulations;

(4) That the operation of the proposed massage establishment is likely to be injurious to the health, safety, welfare, and interest of the people of the city;

(5) That the applicant is lacking in the background and qualifications to conduct a bona fide massage establishment; or

(6) That the applicant has violated any provision of this chapter, or of any similar ordinance, law, rule or regulation of another public agency which regulates the operation of massage establishments.

(Ord. 3113 § 4, 1979: Ord. 2946 § 1, 1976: Ord. 2921 § 9, 1976: Ord. 2833 § 1 (part), 1974)

4.54.040 Massage establishment license application fee.

Any application for a license to operate a massage establishment shall be accompanied by a nonrefundable fee as set forth in the municipal fee schedule. The application fee shall be used to defray, in part, the costs of investigation and report, and is not made in lieu of any other fees or taxes required under this code. A license to operate a massage establishment shall be renewed annually. The renewal fee shall be as set forth in the municipal fee schedule.

(Ord. 2960 § 27, 1976: Ord. 2921 § 1, 1976: Ord. 2833 § 1 (part), 1974)

4.54.050 Application for massage establishment license.

(a) Any application for a license to operate a massage establishment shall be made with the chief of police. Within thirty working days following receipt of a completed application, the chief of police shall either issue the permit or mail a written statement of his reasons for denial thereof. The application shall set forth the exact nature of the massage, bath or health treatment to be administered, the proposed place of business and facilities therefor, and the name and address of each applicant. The chief of police may request the applicant to allow fingerprints to be taken when needed for the purpose of establishing identification. In addition to the requirements of Chapter 4.04 and this section, any applicant shall furnish the following information:

(1) The previous addresses of applicant, if any, for a period of three years immediately prior to the date of the application and the dates of residence at each;

(2) Written proof that the applicant is at least eighteen years of age;

(3) Applicant's height, weight, color of eyes and hair;

(4) The applicant shall allow the police officer processing the application to take photographs of the applicant;

(5) Business, occupation or employment history of the applicant for the three years immediately preceding the date of the application;

(6) If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each stockholder holding more than five percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply;

(7) The names and residence addresses of all persons currently employed or intended to be employed in the massage establishment, regardless of the nature of the employment, other than any person licensed pursuant to Section 4.54.060, along with the proposed or actual nature of the work performed or to be performed, and recent passport-size photographs, suitable to the police officer processing the application, of each such employee. The chief of police may require such employee to allow fingerprints to be taken for the purpose of identification. Any applicant or licensee shall notify the city in writing of the names, addresses and nature of the work, of any new employees, within five days of such employment, and supply the photographs described in this subsection. Such new employees shall allow fingerprints to be taken for the purpose of identification upon request. "Employee" includes every owner, partner, manager, supervisor and worker, whether paid or not, who renders personal services of any nature in the operation of a massage establishment;

(8) Such other information as may be deemed necessary by the chief of police.

(Ord. 2946 § 2, 1976: Ord. 2921 § 9, 1976: Ord. 2833 § 1 (part), 1974)

4.54.060 Massage technician permit required.

(a) It is unlawful for any person to act as a massage technician or a massage technician trainee unless such person holds a valid permit issued by the chief of police. A massage technician permit shall be issued to any person who has fulfilled the requirements of Section 4.54.080, and all other applicable provisions of this code; unless grounds for denial of such permit are found to exist. In addition to those set forth in Section 4.04.140, grounds for denial include:

- (1) The applicant made a material misstatement in the application for a license;
- (2) The applicant has, within five years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or any violations of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d), or 647(h) of the California Penal Code, or of any offense involving theft of property or violence;
- (3) That the issuance of the permit is likely to be injurious to the health, safety, welfare, and interest of the people of the city;
- (4) That the applicant is lacking in the background and qualifications to act as a massage technician; or
- (5) That the applicant has violated any provision of this chapter, or of any similar ordinance, law, rule or regulation of another public agency which regulates the operation of massage establishments or massage technicians.

(Ord. 3113 § 5, 1979: Ord. 2921 §§ 2, 9, 1976: Ord. 2833 § 1 (part), 1974)

4.54.070 Massage technician application fee.

Any application for a permit to act as a massage technician shall be accompanied by a nonrefundable fee as set forth in the municipal fee schedule. A massage technician permit shall be renewed annually. The renewal fee shall be as set forth in the municipal fee schedule. Any person who applies for a license to operate a massage establishment and who desires to act as a massage technician within said establishment shall not be required to furnish the information set forth in Section 4.54.080.

(Ord. 2960 § 28, 1976: Ord. 2921 § 3, 1976: Ord. 2833 § 1 (part), 1974)

4.54.080 Application for massage technician permit.

(a) Any application for a permit to act as a massage technician shall be made with the chief of police. Within thirty working days following receipt of a completed application, the chief of police shall either issue the permit, or mail a written statement of his reasons for denial thereof. If he takes neither action, the permit shall be deemed to be issued. The chief of police may request the applicant to furnish fingerprints when needed for the purpose of establishing identification. In addition to the requirements of Chapter 4.04, the applicant shall furnish the following information:

- (1) Name, residence address and telephone number;
- (2) Social security number and driver's license number, if any;
- (3) Applicant's weight, height, color of hair and eyes;
- (4) The applicant shall furnish a recent photograph of applicant to the police department official who processes the application;
- (5) Written evidence that the applicant is at least eighteen years of age;
- (6) Business, occupation or employment of the applicant for the three years immediately preceding the date of application;
- (7) The name and address of the establishment where the applicant is to be employed, and the name of the owner or operator of the same. Any massage technician granted a permit pursuant to this section must report a change in massage establishment employment within five days of said change;
- (8) The name and address of the recognized school of massage attended, the date attended, and a copy of the diploma or certificate of graduation awarded the applicant showing the applicant has completed not fewer than seventy hours of instruction, or written and verified proof that applicant has had at least five hundred hours' experience in the profession, work and method of massage as of the effective date of the ordinance codified in this chapter.

(Ord. 2921 §§ 4, 9, 1976: Ord. 2833 § 1 (part) 1974)

4.54.090 Massage technician trainee.

(a) Any person desiring to obtain a permit to act as a massage technician trainee shall make an application to the chief of police. Within thirty working days following receipt of a completed application, the chief of police shall either issue the permit, or mail a written statement of his reasons for denial thereof. If he takes neither action, the permit shall be deemed to be issued. A massage technician trainee permit shall be issued to any person who has fulfilled the requirements of Section 4.54.080 and who produces written proof that the applicant is currently enrolled in a recognized school of massage, as defined in this chapter; of the date the applicant enrolled in the recognized school of massage; and the scheduled date of graduation; and that the applicant has completed at least fifty hours of instruction and the date this instruction was completed; provided the applicant submits a letter signed by the owner or manager of a licensed massage establishment stating his immediate intent to employ the applicant to do massage as a trainee working under the direct supervision and control of a massage technician who has received a permit under the provisions of this chapter unless:

- (1) The applicant knowingly made a material misstatement in the application for the trainee permit; or
- (2) The applicant has, within five years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or any violation of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d) or 647(h) of the California Penal Code or of any offense involving theft of property.

The trainee permit shall allow the student to work in a massage establishment under the supervision and direction of a massage technician who has received a permit issued under the provisions of this chapter; provided, however, no licensed massage technician shall be permitted to supervise more than two persons issued a trainee permit. The trainee permit shall expire three months from the date of issuance and shall not be renewed unless good cause is shown by the applicant for such renewal.

No fee shall be required of a massage technician trainee applicant. The trainee must at all times comply with the laws relating to massage establishments, and the failure to comply may render the trainee ineligible to obtain a massage technician permit.

Any massage technician trainee who, during the life of the trainee permit, completes the instruction required of a massage technician, shall be issued a massage technician permit upon payment of a massage technician application fee as set forth in the municipal fee schedule.

(Ord. 2960 § 29, 1976: Ord. 2921 §§ 5, 9, 1976: Ord. 2833 § 1 (part), 1974)

4.54.100 Appeal.

In the event a permit or license application has been denied, the applicant shall proceed pursuant to the appeal and hearing provision in Chapter 4.04.

(Ord. 2833 § 1 (part), 1974)

4.54.110 Massage establishment facilities and operations requirements.

(a) All massage establishments shall comply with the following facilities and operations requirements:

- (1) Massage establishments shall comply with all code requirements.
- (2) A minimum of one tub or shower, and one toilet and wash basin shall be provided in every massage establishment.
- (3) Cabinets or other covered space shall be provided for the storage of clean linen. Approved receptacles shall be provided for the storage of all soiled linen and paper towels.
- (4) Minimum ventilation shall be provided in accordance with the building code of the city. To allow for adequate ventilation in cubicles, rooms and areas provided for patrons' use, which are not serviced directly by required window or mechanical systems of ventilation, partitions shall be constructed so that the height of partition does not exceed seventy-five percent of the floor-to-ceiling height of the area in which they are located.
- (5) All plumbing and electrical installations shall be installed under permit and inspection of the building inspection department, and such installations shall be installed in accordance with the Uniform Building Code and the Uniform Plumbing Code.
- (6) The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface.

- (7) All lavatories or wash basins shall be provided with hot and cold running water, soap and single-service towels in wall-mounted dispensers.
- (8) Security deposit facilities capable of being locked by the patron or a security bag that may be carried by the patron shall be available for the protection of the valuables of the patrons.
- (9) Every portion of a massage establishment, including appliances, apparatus and personnel, shall be kept clean and operated in a sanitary condition.
- (10) All massage establishments shall be provided with clean and sanitary towels, sheets and linens in sufficient quantity. Towels, sheets and linens shall not be used by more than one person. Reuse of such linen is prohibited unless the same has first been laundered. Heavy white paper may be substituted for sheets; provided, that such paper is used once for each person and then discarded into a sanitary receptacle.
- (11) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.
- (12) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.
- (13) Pads used on massage tables shall be covered with durable, washable plastic or other acceptable waterproof material.
- (14) (A) To protect patrons from potential health and sanitary hazards, all employees, massage technicians and massage technician trainees shall be clean and shall perform all services on the premises in full, clean outer garments.
- (B) Exception. A massage technician may perform services wearing no clothing or wearing less than full outer garments when teaching a class gathered to learn the theory, practice, or work of massage, and when said class consists in part of massage by the technician or members of the gathered class.
- (15) Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted in a conspicuous public location in each massage establishment. All letters and numbers shall be capitals, and not less than one-half inch in height.
- (16) (A) Massage establishments shall close and remain closed from eleven p.m. to nine a.m.
- (B) After one year of operation a massage establishment may be exempted from the hours restrictions of this section by the chief of police upon a written request which details the factual reasons supporting good cause for the exemption. The chief of police, in determining what constitutes good cause for this exemption from the hours restrictions, shall consider and weight the following factors:
- (i) The criteria outlined in Section 4.04.140 of Chapter 4.04;
 - (ii) The criteria outlined in Section 4.54.030 of this chapter;

(iii) The impact which the massage establishment has had on the health, safety, and welfare of the local community, including, but not limited to, parking and traffic congestion;

(iv) The massage establishment's compliance or noncompliance with all federal, state, and local laws, including, but not limited to, this municipal code.

If, upon review of those factors, the chief of police determines that good cause does exist for the requested exemption, the chief may then exempt the particular massage establishment from the hours restrictions of this section. However, in no event shall any massage establishment close later than two a.m. nor open earlier than six a.m.

(C) The exemption from the hours restrictions of this section shall be subject to review and renewal annually at the same time as the renewal of the underlying license and the same factual showing shall be made as that required for the initial exemption. The chief shall not grant an hours exemption unless said establishment has maintained the criteria specified in Section 4.54.110(a)(16)(B).

(17) No massage establishment shall be allowed in the following locations:

(A) Within two hundred fifty feet of the exterior property limits of any public or private elementary school, junior high school or high school;

(B) Within two hundred fifty feet of the exterior limits of any district where residential use is the principal permitted use, including all R and RM districts, O-S districts, and any P-C or P-F districts where the principal use permitted or maintained is residential; or

(C) Within twelve hundred feet of the exterior property limits of any other premises lawfully occupied by a massage establishment, by any establishment subject to the provisions of Chapter 4.55, any cardroom or hot tub/sauna establishment. For the purpose of determining compliance with this standard, as to, between and with respect to establishments lawfully in operation on the effective date of this section, priority between such existing establishments shall be assigned in accordance with the dates upon which said establishments commenced such lawful operations.

All massage establishments lawfully in operation on the effective date of this section shall within sixty days of said date apply to the chief of police for a determination as to compliance with the provisions of this section. Said application shall be in such form as prescribed by the chief of police.

Any massage establishment legally existing on the effective date of this subsection and which is not in compliance with the provisions of this subsection shall comply with said provisions on or before May 24, 1987; provided, however, that any such establishment which intends to in any way transfer ownership or alter or change the nature of any such massage establishment on or after the effective date of this subsection shall comply with the provisions of this subsection prior to such transfer, alteration or change. Any such use which at the expiration of said period is not in compliance with the provisions of this subsection shall at that time discontinue and abate its operation.

Any massage establishment lawfully in operation upon the effective date of this subsection failing to comply with the provisions of this subsection shall be issued a limited-term license in lieu of its current license, containing a statement on its face reciting such noncompliance and the date by which compliance must be accomplished, and that said license shall not be renewed beyond said date.

All distances referred to in this subsection shall be measured between the closest points on the

exterior property lines or area boundaries of the parcels or areas involved, except that when a massage establishment subject to the provisions of this section occupies one unit of a multi-unit structure located on a single parcel, distances shall be measured from the exterior boundaries of the unit so occupied.

(18) **Outcall Prohibited.** No person shall engage in any of the services permitted under this chapter at any place other than an establishment licensed pursuant to Chapter 4.54, unless the patron possesses and presents a valid prescription or other writing from a licensed physician to the effect that the patron of such services cannot be treated at a licensed massage establishment. A record of every such prescription or other writing shall be obtained and kept by the person rendering the services for a period of one year. Such record shall show the name and address of the doctor, the date, and any prescription number.

(Ord. 4642 § 3, 2000: Ord. 3592 § 1, 1985: Ord. 3113 § 6, 1979: Ord. 3095 § 1, 1978: Ord. 2946 § 3, 1976: Ord. 2921 § 6, 1976: Ord. 2833 § 1 (part), 1974)

4.54.120 Inspection by officials.

Any and all investigating officials of the city shall have the right to enter massage establishments from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations. A warrant shall be obtained whenever required by law.

(Ord. 2833 § 1 (part), 1974)

4.54.130 Business name.

No person licensed to operate a massage establishment shall operate under any name or conduct business under any designation not specified in the license.

(Ord. 2833 § 1 (part), 1974)

4.54.140 Business location change.

Upon a change of location of a massage establishment, an application to the chief of police shall be made, and such application shall be granted, provided all applicable provisions of this code are complied with and a change of location fee as set forth in the municipal fee schedule to defray, in part, the costs of investigation and report, has been paid to the city.

(Ord. 2960 § 30, 1976: Ord. 2921 §§ 7, 9, 1976: Ord. 2833 § 1 (part), 1974)

4.54.150 Sale or transfer of massage establishment interest.

A sale or transfer of any interest in a massage establishment, which interest would be reported as required in this chapter upon application for a massage establishment license, shall be reported to the chief of police within ten days of such sale or transfer. The chief of police shall investigate any person receiving any interest in a massage establishment as a result of such sale or transfer, and if such person

satisfies the requirements relating to massage establishment license applicants, the existing license shall be endorsed to include such person. A fee as set forth in the municipal fee schedule shall be paid to the city for the investigation by the chief of police necessitated by each such sale or transfer.

(Ord. 2960 § 31, 1976; Ord. 2921 §§ 8, 9, 1976; Ord. 2833 § 1 (part), 1974)

4.54.160 Display of permits, licenses.

The owner or operator of a massage establishment shall display the massage establishment license and the permit of each and every massage technician or massage technician trainee employed in the establishment in an open and conspicuous place on the premises. Passport-size photographs of the licensee and permittees shall be affixed to the respective license and permits on display pursuant to this section. Home addresses of massage technicians and massage technician trainees need not be displayed.

(Ord. 2833 § 1 (part), 1974)

4.54.170 Exemptions.

(a) This chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

- (1) Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly licensed to practice their respective professions in the state of California;
- (2) Nurses registered under the laws of the state of California;
- (3) Trainers of any amateur, semiprofessional or professional athlete or athletic team;
- (4) Barbers and beauticians who are duly licensed under the laws of the state of California.

(Ord. 2833 § 1 (part), 1974)

4.54.180 Grounds for denial, probation, and disciplinary action.

In addition to any provisions of this chapter, the grounds set forth in Section 4.04.140 shall apply to licenses and permits required under this chapter. Any circumstances constituting grounds for denial shall also constitute grounds for revocation, suspension or disciplinary action.

(Ord. 3113 § 7, 1979; Ord. 2833 § 1 (part), 1974)

4.54.190 Hearing.

Any licensee or permittee whose license or permit has been suspended or revoked shall proceed pursuant to the appeal and hearing provisions of Chapter 4.04.

(Ord. 2833 § 1 (part), 1974)

4.54.200 Application to existing establishments and technicians.

All operators of existing massage, bath or health treatment establishments, and all persons engaged in giving massage, bathing and health treatments in the city upon the effective date of this chapter shall comply with all application and other requirements within thirty days following the effective date of this chapter.

(Ord. 2833 § 1 (part), 1974)

4.54.210 Application of other code provisions.

Chapter 4.04 shall apply to the subject matter of this chapter in all respects, including those not specifically mentioned in this chapter.

(Ord. 2833 § 1 (part), 1974)

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City of Palo Alto

Police Department

January 25, 2011

Ideal Health Chiropractic
744 San Antonio Rd., Ste. 10
Palo Alto, California 94303

Dear Mr.

The normal permit renewal process for massage permits has been suspended due to pending changes to Palo Alto's massage ordinance.

This letter will serve as your temporary massage technician permit. This permit will allow you to provide massage as an accessory service at Ideal Health Chiropractic, located at 744 San Antonio Rd., Ste. 10, Palo Alto, CA 94303, provided total massage services (other than those based on a diagnosed condition and completed within the scope of a State issued license) do not exceed 25% of the businesses overall activity. It will remain valid until after a new substantially modified massage code is enacted. This temporary permit will terminate at such time as the future massage code indicates as the date certain by which all permittees must have renewed their permits under the authority of the reenacted massage code. Please retain this permit.

Until such time as a revised massage ordinance takes effect, massage will continue to be governed by Palo Alto's current Municipal Code Chapter 4.54. You will be advised of meeting dates as the proposed ordinance moves forward.

Sincerely,

Heather Johnson
Code Enforcement Officer
Palo Alto Police Department
275 Forest Avenue
Palo Alto, CA 94301
Direct: (650) 329-2147
Fax: (650) 326-8819
Email: heather.johnson@cityofpaloalto.org
Website: www.city.palo-alto.ca.us/

Cc: Dr.
Fax:

:- Attachment B - Temp Permit (2287 : Massage Ordinance Revision)

275 Forest Avenue
Palo Alto, CA 94301
650.329.2406
650.329.2565 fax
650.617.3120 Administration fax

Senate Bill No. 731

CHAPTER 384

An act to add and repeal Chapter 10.5 (commencing with Section 4600) of Division 2 of the Business and Professions Code, relating to massage therapy.

[Approved by Governor September 27, 2008. Filed with Secretary of State September 27, 2008.]

LEGISLATIVE COUNSEL'S DIGEST

SB 731, Oropeza. Massage therapy.

Existing law provides for the regulation of various healing arts professionals, including physicians and surgeons, chiropractors, physical therapists, and acupuncturists. Existing law authorizes the legislative body of a city or county to enact ordinances providing for the licensing and regulation of the business of massage when carried on within the city or county.

This bill would, commencing September 1, 2009, provide for the certification of massage practitioners and massage therapists by the Massage Therapy Organization, which would be a nonprofit organization meeting specified requirements, and would impose certain duties on the organization. The bill would require applicants for certification to be 18 years of age or older, to meet specified educational criteria, to provide to the organization and update certain information, to provide fingerprints for submission to the Department of Justice for a criminal background check, and to pay fees required by the organization. The bill would require the Department of Justice to review specified information and to provide to the organization fitness determinations and certain other information. The bill would allow the organization to take certain disciplinary action against certificate holders and would require the organization to take certain action with regard to suspending or revoking a certificate if the certificate holder has been arrested for, and charged with, specified crimes. The bill would make it an unfair business practice for a person to state, advertise, or represent that he or she is certified or licensed by a governmental agency as a massage therapist or practitioner, or to make other false representations, as specified. The bill would prohibit a city, county, or city and county from enacting certain ordinances regulating the practice of massage by a certificate holder, as specified. The bill would make its provisions subject to review by the Joint Committee on Boards, Commissions, and Consumer Protection. The bill would repeal these provisions on January 1, 2016.

The people of the State of California do enact as follows:

SECTION 1. It is the intent of this act to create a voluntary certification for the massage therapy profession that will enable consumers to easily identify credible certified massage therapists; assure that certified massage therapists have completed sufficient training at approved schools; phase in increased education and training standards consistent with other states; assure that massage therapy can no longer be used as a subterfuge to violate subdivision (a) or (b) of Section 647 of the Penal Code; and to provide a self-funded nonprofit oversight body to approve certification and education requirements for massage therapists.

SEC. 2. Chapter 10.5 (commencing with Section 4600) is added to Division 2 of the Business and Professions Code, to read:

CHAPTER 10.5. MASSAGE THERAPISTS

4600. As used in this chapter, the following terms shall have the following meanings:

(a) "Approved school" or "approved massage school" means a facility that meets minimum standards for training and curriculum in massage and related subjects and that is approved by any of the following:

(1) The Bureau for Private Postsecondary and Vocational Education pursuant to former Section 94739 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601.

(2) The Department of Consumer Affairs.

(3) An institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is one of the following:

(A) A public institution.

(B) An institution incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, and that is not managed by any entity for profit.

(C) A for-profit institution.

(D) An institution that does not meet all of the criteria in subparagraph (B) that is incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that has been in continuous operation since April 15, 1997, and that is not managed by any entity for profit.

(4) A college or university of the state higher education system, as defined in Section 100850 of the Education Code.

(5) A school of equal or greater training that is approved by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

(b) "Compensation" means the payment, loan, advance, donation, contribution, deposit, or gift of money or anything of value.

(c) "Massage therapist," "bodyworker," "bodywork therapist," or "massage and bodywork therapist" means a person who is certified by the Massage Therapy Organization under subdivision (c) of Section 4601 and who administers massage for compensation.

(d) "Massage practitioner," "bodywork practitioner," or "massage and bodywork practitioner" means a person who is certified by the Massage Therapy Organization under subdivision (b) of Section 4601 and who administers massage for compensation.

(e) "Organization" means the Massage Therapy Organization created pursuant to this chapter, which shall be a nonprofit organization exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code. The organization may commence activities as authorized by this section once it has submitted a request to the Internal Revenue Service seeking this exemption.

(f) "Registered school" means a facility that meets minimum standards for training and curriculum in massage and related subjects and that either was recognized by the Bureau for Private Postsecondary and Vocational Education pursuant to Section 94931 of the Education Code prior to July 1, 2007, and as of the date on which an applicant met the requirements of paragraph (2) of subdivision (b) or subparagraph (A) of paragraph (2) of subdivision (c) of Section 4601, or is recognized by the Department of Consumer Affairs, by an institution accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (2) of subdivision (a) of Section 4600, by a college or university of the state higher education system as defined in Section 100850 of the Education Code, or by a school of equal or greater training that is approved by the corresponding agency in another state.

(g) For purposes of this chapter, the terms "massage" and "bodywork" shall have the same meaning.

4600.5. (a) A Massage Therapy Organization, as defined in subdivision (e) of Section 4600, shall be created and shall have the responsibilities and duties set forth in this chapter. The organization may take any reasonable actions to carry out the responsibilities and duties set forth in this chapter, including, but not limited to, hiring staff and entering into contracts.

(b) (1) The organization shall be governed by a board of directors made up of two representatives selected by each professional society, association, or other entity, whose membership is comprised of massage therapists and that chooses to participate in the organization. To qualify, a professional society, association, or other entity shall have a dues-paying membership in California of at least 1,000 individuals for the last three years, and shall have bylaws that require its members to comply with a code of ethics. The board of directors shall also include each of the following persons:

(A) One member selected by each statewide association of private postsecondary schools incorporated on or before January 1, 2010, whose member schools have together had at least 1,000 graduates in each of the previous three years from massage therapy programs meeting the approval standards set forth in subdivision (a) of Section 4600, except from those qualifying associations that choose not to exercise this right of selection.

(B) One member selected by the League of California Cities, unless that entity chooses not to exercise this right of selection.

(C) One member selected by the California State Association of Counties, unless that entity chooses not to exercise this right of selection.

(D) One member selected by the Director of Consumer Affairs, unless that entity chooses not to exercise this right of selection.

(E) One member appointed by the California Community College Chancellor's Office, unless that entity chooses not to exercise this right of selection. The person appointed, if any, shall not be part of any massage therapy certificate or degree program.

The organization's bylaws shall establish a process for appointing other professional directors as determined by the board.

(2) The initial board of directors shall establish the organization, initiate the request for tax-exempt status from the Internal Revenue Service, and solicit input from the massage community concerning the operations of the organization. The initial board of directors, in its discretion, may immediately undertake to issue the certificates authorized by this chapter after adopting the necessary bylaws or other rules, or may establish by adoption of bylaws the permanent governing structure prior to issuing certificates.

(c) The board of directors shall establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Initial and renewal fees shall be established by the board of directors annually.

(d) The meetings of the organization shall be subject to the rules of the Bagley-Keene Open Meetings Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

4601. (a) The organization shall issue a certificate under this chapter to an applicant who satisfies the requirements of this chapter.

(b) (1) In order to obtain certification as a massage practitioner, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

(A) The applicant is 18 years of age or older.

(B) The applicant has successfully completed, at a single approved school, curricula in massage and related subjects totaling a minimum of 250 hours that incorporates appropriate school assessment of student knowledge and skills. Included in the hours shall be instruction addressing anatomy and physiology, contraindications, health and hygiene, and business and ethics, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

(C) All fees required by the organization have been paid.

(2) New certificates shall not be issued pursuant to this subdivision after December 31, 2015. Certificates issued pursuant to this section or subdivision (a) or (c) of Section 4604 on or before December 31, 2015, shall, after December 31, 2015, be renewed without any additional educational requirements, provided that the certificate holder continues to be qualified pursuant to this chapter.

(c) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the organization with satisfactory evidence that he or she meets all of the following requirements:

(1) The applicant is 18 years of age or older.

(2) The applicant satisfies at least one of the following requirements:

(A) He or she has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours. Of this 500 hours, a minimum of 250 hours shall be from approved schools. The remaining 250 hours required may be secured either from approved or registered schools, or from continuing education providers approved by, or registered with, the organization or the Department of Consumer Affairs. After December 31, 2015, applicants may only satisfy the curricula in massage and related subjects from approved schools.

(B) The applicant has passed a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards, and that is approved by the board. The successful completion of this examination may have been accomplished before the date the organization is authorized by this chapter to begin issuing certificates.

(3) All fees required by the organization have been paid.

(d) The organization shall issue a certificate to an applicant who meets the other qualifications of this chapter and holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within this chapter. The organization shall have discretion to give credit for comparable academic work completed by an applicant in a program outside of California.

(e) An applicant applying for a massage therapist or massage practitioner certificate shall file with the organization a written application provided by the organization, showing to the satisfaction of the organization that he or she meets all of the requirements of this chapter.

(f) Any certification issued under this chapter shall be subject to renewal every two years in a manner prescribed by the organization, and shall expire unless renewed in that manner. The organization may provide for the late renewal of a license.

(g) (1) The organization shall have the responsibility to determine that the school or schools from which an applicant has obtained the education required by this chapter meet the requirements of this chapter. If the organization has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the organization shall investigate the facts to

determine that the applicant received the required education prior to issuing a certificate.

(2) For purposes of paragraph (1) and any other provision of this chapter for which the organization is authorized to receive factual information as a condition of taking any action, the organization shall have the authority to conduct oral interviews of the applicant and others or to make any investigation deemed necessary to establish that the information received is accurate and satisfies any criteria established by this chapter.

4601.2. No certificates shall be issued by the organization pursuant to this chapter prior to September 1, 2009.

4601.3. (a) Prior to issuing a certificate to the applicant or designating a custodian of records, the organization shall require the applicant or the custodian of records candidate to submit fingerprint images in a form consistent with the requirements of this section. The organization shall submit the fingerprint images and related information to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and of state and federal level arrests for which the Department of Justice establishes that the applicant or candidate was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and shall compile and disseminate a fitness determination regarding the applicant or candidate to the organization.

(b) The Department of Justice shall provide information to the organization pursuant to subdivision (p) of Section 11105 of the Penal Code.

(c) The Department of Justice and the organization shall charge a fee sufficient to cover the cost of processing the request for state and federal level criminal offender record information.

(d) The organization shall request subsequent arrest notification service from the Department of Justice, as provided under Section 11105.2 of the Penal Code, for all applicants for licensure or custodian of records candidates for whom fingerprint images and related information are submitted to conduct a search for state and federal level criminal offender record information.

(e) This section shall become operative September 1, 2009.

4601.4. Organization directors, employees, or volunteer individuals may undergo the background investigation process delineated in Section 4601.3.

4602. (a) The organization may discipline a certificate holder by any, or a combination, of the following methods:

(1) Placing the certificate holder on probation.

(2) Suspending the certificate and the rights conferred by this chapter on a certificate holder for a period not to exceed one year.

(3) Revoking the certificate.

(4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.

(5) Taking other action as the organization, as authorized by this chapter or its bylaws, deems proper.

(b) The organization may issue an initial certificate on probation, with specific terms and conditions, to any applicant.

(c) (1) Notwithstanding any other provision of law, if the organization receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of Section 647 of the Penal Code or any other offense described in subdivision (h) of Section 4603, the organization shall take all of the following actions:

(A) Immediately suspend, on an interim basis, the certificate of that certificate holder.

(B) Notify the certificate holder within 10 days at the address last filed with the organization that the certificate has been suspended, and the reason for the suspension.

(C) Notify any business within 10 days that the organization has in its records as employing the certificate holder that the certificate has been suspended.

(2) Upon notice to the organization that the charges described in paragraph (1) have resulted in a conviction, the suspended certificate shall become subject to permanent revocation. The organization shall provide notice to the certificate holder within 10 days that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence within 15 days that the conviction is either invalid or that the information is otherwise erroneous.

(3) Upon notice that the charges have resulted in an acquittal, or have otherwise been dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any business that received notice pursuant to subparagraph (C) of paragraph (1) shall be notified of the reinstatement within 10 days.

4602.5. (a) Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses, the organization shall provide information concerning a certificate holder, including, but not limited to, the current status of the certificate, any history of disciplinary actions taken against the certificate holder, the home and work addresses of the certificate holder, and any other information in the organization's possession that is necessary to verify facts relevant to administering the local ordinance.

(b) The organization shall accept information provided by any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses. The organization shall have the responsibility to review any information received and to take any actions authorized by this chapter that are warranted by that information.

4603. It is a violation of this chapter for a certificate holder to commit, and the organization may deny an application for a certificate or discipline a certificate holder for, any of the following:

(a) Unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions.

(b) Procuring a certificate by fraud, misrepresentation, or mistake.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any rule or bylaw adopted by the organization.

(d) Conviction of any felony, or conviction of a misdemeanor that is substantially related to the qualifications or duties of a certificate holder, in which event the record of the conviction shall be conclusive evidence of the crime.

(e) Impersonating an applicant or acting as a proxy for an applicant in any examination referred to under this chapter for the issuance of a certificate.

(f) Impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate.

(g) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.

(h) Committing any act punishable as a sexually related crime.

4603.1. (a) No certificate holder or certificate applicant may be disciplined or denied a certificate pursuant to Section 4603 except according to procedures satisfying the requirements of this section. A denial or discipline not in accord with this section or subdivision (c) of Section 4602 shall be void and without effect.

(b) Any certificate applicant denial or certificate holder discipline shall be done in good faith and in a fair and reasonable manner. Any procedure that conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full circumstances of the certificate denial or certificate holder discipline are considered.

(c) A procedure is fair and reasonable when the procedures in subdivision (c) of Section 4602 are followed, or if all of the following apply:

(1) The provisions of the procedure have been set forth in the articles or bylaws, or copies of those provisions are sent annually to all the members as required by the articles or bylaws.

(2) It provides the giving of 15 days prior notice of the certificate denial or certificate holder discipline and the reasons therefor.

(3) It provides an opportunity for the certificate applicant or certificate holder to be heard, orally or in writing, not less than five days before the effective date of the certificate denial or certificate holder discipline by a

person or body authorized to decide that the proposed certificate denial or certificate holder discipline not take place.

(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or certified mail sent to the last address of the certificate applicant or certificate holder shown on the organization's records.

(e) Any action challenging a certificate denial or certificate holder discipline, including any claim alleging defective notice, shall be commenced within one year after the date of the certificate denial or certificate holder discipline. If the action is successful, the court may order any relief, including reinstatement, that it finds equitable under the circumstances.

(f) This section governs only the procedures for certificate denial or certificate holder discipline and not the substantive grounds therefor. A certificate denial or certificate holder discipline based upon substantive grounds that violates contractual or other rights of the member or is otherwise unlawful is not made valid by compliance with this section.

(g) A certificate applicant or certificate holder who is denied or disciplined shall be liable for any charges incurred, services or benefits actually rendered, dues, assessments, or fees incurred before the certificate denial or certificate holder discipline or arising from contract or otherwise.

4603.5. It shall be the responsibility of any certificate holder to notify the organization of his or her home address, as well as the address of any business establishment where he or she regularly works as a massage therapist or massage practitioner, whether as an employee or as an independent contractor. A certificate holder shall notify the organization within 30 days of changing either his or her home address or the address of the business establishment where he or she regularly works as a massage therapist or massage practitioner.

4604. (a) Notwithstanding Section 4601, the organization may grant a massage practitioner certificate to any person who applies on or before January 1, 2012, with one of the following:

(1) A current valid massage permit or license from a California city, county, or city and county and documentation evidencing that the person has completed at least a 100-hour course in massage at a state-approved or registered school, or out-of-state school recognized by the organization as providing comparable education, has been practicing for at least three years, and has provided at least 1,000 hours of massage to members of the public for compensation.

(2) Documentation evidencing that the person has completed at least a 100-hour course in massage at a state-approved or registered school, or out-of-state school recognized by the organization as providing comparable education, has been practicing for at least three years, and has provided at least 1,750 hours of massage to members of the public for compensation. For purposes of this subdivision, evidence of practice shall include either of the following:

(A) A W-2 form or employer's affidavit containing the dates of the applicant's employment.

(B) Tax returns indicating self-employment as a massage practitioner or massage therapist or any other title that may demonstrate experience in the field of massage.

(3) Documentation evidencing that the person holds a current valid certificate of authorization as an instructor at an approved massage school, or holds the position of a massage instructor at a school accredited by an agency recognized by the United States Department of Education, or colleges and universities of the state higher education system, as defined in Section 100850 of the Education Code.

(b) (1) After reviewing the information submitted under subdivision (a), the organization may require additional information necessary to enable it to determine whether to issue a certificate.

(2) If an applicant under paragraph (1) of subdivision (a) or paragraph (1) of subdivision (c) has not complied with Section 4601.3, or its equivalent, when obtaining a license or permit from the city, county, or city and county, the organization shall require the applicant to comply with Section 4601.3 prior to issuing a certificate pursuant to this section.

(c) (1) A person applying for a massage practitioner certificate on or before January 1, 2012, who meets the educational requirements of either paragraph (1) or (2) of subdivision (a), but who has not completed the required number of practice hours prior to submitting an application pursuant to this section, may apply for a conditional certificate.

(2) An applicant for a conditional certificate shall, within five years of being issued the conditional certificate, be required to complete at least 30 hours of additional education per year from schools or courses described in paragraph (5) until he or she has completed a total of at least 250 hours of education, which may include massage education hours previously completed in a massage course described in either paragraph (1) or (2) of subdivision (a).

(3) Upon successful completion of the requirements of this subdivision, the organization shall issue a certificate to the person that is not conditional.

(4) The organization shall immediately revoke the conditional certificate issued to any person pursuant to this subdivision if the time period specified in paragraph (2) expires without proof of completion of the requirements having been filed with the organization.

(5) Any additional education required by this section may be completed through courses provided by any of the following:

(A) An approved school.

(B) A registered school.

(C) A provider approved by, or registered with, the organization or the Department of Consumer Affairs.

(D) A provider that establishes to the satisfaction of the organization that its course or courses are appropriate educational programs for this purpose.

(d) Nothing in this section shall preclude the organization from exercising any power or authority conferred by this chapter with respect to a conditional certificate holder.

4605. It is an unfair business practice for any person to state or advertise or put out any sign or card or other device, or to represent to the public through any print or electronic media, that he or she is certified, registered, or licensed by a governmental agency as a massage therapist or massage practitioner.

4606. It is an unfair business practice for any person to hold oneself out or use the title of "certified massage therapist" or "certified massage practitioner" or any other term, such as "licensed," "registered," or "CMT," that implies or suggests that the person is certified as a massage therapist or practitioner without meeting the requirements of Section 4601 or 4604.

4607. The superior court in and for the county in which any person acts as a massage practitioner or massage therapist in violation of the provisions of this chapter, may, upon a petition by any person, issue an injunction or other appropriate order restraining the conduct. The proceedings under this paragraph shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure.

4608. Nothing in this chapter is intended to limit or prohibit a person who obtains a certification pursuant to this chapter from providing services pursuant to, and in compliance with, Sections 2053.5 and 2053.6.

4612. (a) (1) The holder of a certificate issued pursuant to this chapter shall have the right to practice massage, consistent with this chapter and the qualifications established by his or her certification, in any city, county, or city and county in this state and shall not be required to obtain any other license, permit, or other authorization, except as provided in this section, to engage in that practice.

(2) Notwithstanding any other provision of law, a city, county, or city and county shall not enact an ordinance that requires a license, permit, or other authorization to practice massage by an individual who is certified pursuant to this chapter and who is practicing consistent with the qualifications established by his or her certification. No provision of any ordinance enacted by a city, county, or city and county that is in effect before the effective date of this chapter, and that requires a license, permit, or other authorization to practice massage, may be enforced against an individual who is certified pursuant to this chapter.

(3) Except as provided in subdivision (b), nothing in this section shall be interpreted to prevent a city, county, or city and county from adopting or enforcing any local ordinance governing zoning, business licensing, and reasonable health and safety requirements for massage establishments or businesses. Subdivision (b) shall not apply to any massage establishment or business that employs or uses persons to provide massage services who are not certified pursuant to this chapter.

(b) (1) This subdivision shall apply only to massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to this chapter, and to massage establishments or businesses that employ or use only persons certified pursuant to this chapter to provide massage services. For purposes of this subdivision, a sole proprietorship is

a business where the owner is the only person employed by that business to provide massage services.

(2) (A) Any massage establishment or business described in paragraph (1) shall maintain on its premises evidence for review by local authorities that demonstrates that all persons providing massage services are certified.

(B) Nothing in this section shall preclude a city, county, or city and county from including in a local ordinance a provision that requires a business described in paragraph (1) to file copies or provide other evidence of the certificates held by the persons who are providing massage services at the business.

(3) A city, county, or city and county may charge a massage business or establishment a business licensing fee sufficient to cover the costs of the business licensing activities established by a local ordinance described in this section.

(4) Nothing in this section shall prohibit a city, county, or city and county from adopting land use and zoning requirements applicable to massage establishments or businesses, provided that these requirements shall be no different than the requirements that are uniformly applied to other professional or personal services businesses.

(5) Local building code or physical facility requirements applicable to massage establishments or businesses shall not require additional restroom, shower, or other facilities that are not uniformly applicable to other professional or personal service businesses, nor shall building or facility requirements be adopted that (A) require unlocked doors when there is no staff available to assure security for clients and massage staff who are behind closed doors, or (B) require windows that provide a view into massage rooms that interfere with the privacy of clients of the massage business.

(6) A city, county, or city and county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to, requirements for cleanliness of massage rooms, towels and linens, and reasonable attire and personal hygiene requirements for persons providing massage services, provided that nothing in this paragraph shall be interpreted to authorize adoption of local ordinances that impose additional qualifications, such as medical examinations, background checks, or other criteria, upon any person certified pursuant to this chapter.

(7) Nothing in this section shall preclude a city, county, or city and county from doing any of the following:

(A) Requiring an applicant for a business license to operate a massage business or establishment to fill out an application that requests the applicant to provide relevant information.

(B) Making reasonable investigations into the information so provided.

(C) Denying or restricting a business license if the applicant has provided materially false information.

(c) An owner or operator of a massage business or establishment subject to subdivision (b) shall be responsible for the conduct of all employees or independent contractors working on the premises of the business. Nothing in this section shall preclude a local ordinance from authorizing suspension,

revocation, or other restriction of a license or permit issued to a massage establishment or business if violations of this chapter, or of the local ordinance, occur on the business premises.

(d) Nothing in this section shall preclude a city, county, or city and county from adopting a local ordinance that is applicable to massage businesses or establishments described in paragraph (1) of subdivision (b) and that does either of the following:

(1) Provides that duly authorized officials of the city, county, or city and county have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements.

(2) Requires an owner or operator to notify the city, county, or city and county of any intention to rename, change management, or convey the business to another person.

4613. (a) Nothing in this chapter shall restrict or limit in any way the authority of a city, county, or city and county to adopt a local ordinance governing any person who is not certified pursuant to this chapter.

(b) Nothing in this chapter is intended to affect the practice rights of any person licensed by the state to practice or perform any functions or services pursuant to that license.

4615. This chapter shall be subject to the review required by Division 1.2 (commencing with Section 473).

4620. This chapter shall remain in effect only until January 1, 2016, and as of that date is repealed, unless a later enacted statute, that is enacted before January 1, 2016, deletes or extends that date.

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DIVISION 2 OF THE BUSINESS AND PROFESSIONS CODE, CHAPTER 10.5, SECTION 4600
GUIDE DEVELOPED BY THE CALIFORNIA MASSAGE THERAPY COUNCIL

4600.....Meanings of Terms

4600.5.....Massage Therapy Organization (CAMTC)

4601.....Issuance of Massage Certificates

4601.2.....September 1, 2009

4601.3.....DOJ and FBI Reports

4602.....CAMTC Disciplinary & Denial Authority

4602.5.....CAMTC & Municipalities Information Exchange

4603.....Causes for Denials or Disciplinary Actions

4603.5.....Change of Address Notification

4604.....Grandfathering Prior to January 1, 2012

4605.....Unfair Business Practice

4606.....CMT and CMP Title

4607.....Court Restraint

4608.....Freedom to Provide Services

4612 (a) (1 & 2).....Exemption from Local Ordinances

4612 (a) (3).....Municipalities' Rights

4612 (b) (1).....Establishment Exemptions

4612 (2) (A).....Proof of Certificates on Premises

4612 (2) (B).....Register with Local Municipality

4612 (3).....Business License Fee

4612 (4).....Uniform Land Use and Zoning

4612 (5).....Uniform Building Code

4612 (6).....Reasonable Health & Safety Requirements

4612 (7) (A, B, & C).....Municipal Business License & Investigation

4612 (7) (c).....Owner Responsible for Conduct of Staff

4612 (7) (d) (1).....Municipality Right to Inspect

4612 (7) (d) (2).....Owner Notification to Municipality of Changes

4613.....Municipal Governance of Non-Certified Person

4615.....Chapter Subject to Review

4620.....Sunset January 1, 2016

Attachment D - B&P Code 10.5 (2287 : Massage Ordinance Revision)



CALIFORNIA MASSAGE THERAPY COUNCIL

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REGULATION OF MASSAGE BUSINESSES UNDER B&P SECTION 4600 (SB 731)

Cities still have some authority over massage businesses even if all of the therapists are certified - it gives the cities information about the true owners, provides for business licensing, and gives the cities a means of confirming that the therapists are indeed certified. On the zoning and land use side, it puts massage businesses on par with other businesses that provide personal and professional services.

The key lies in Section 4612. Section 4612(a) provides that local authorities can't require a license or permit to practice massage by an individual already certified by the CAMTC. A city or county can still adopt a local ordinance governing zoning, business licensing, and reasonable health and safety requirements for massage establishments and massage businesses. But, Section 4612 provides some important rules of the road when a business has taken the time to hire only therapists certified by the CAMTC. The rules go both ways - the establishment must do some things and the local authorities must give on some things. So, here it is. If an establishment or business employs ONLY persons certified by the CAMTC, the following applies:

- Section 4612 (b) 2 (A) The establishment/business must maintain on its premises, and available to local authorities, evidence demonstrating that all persons providing massage are certified by the CAMTC.
- Section 4612 (b) 2 (B) The city or county can require the establishment/business to file copies or other evidence of certificates held by persons providing massage.
- Section 4612(b)3 The city or county can charge an establishment/business a business licensing fee to cover the costs of business licensing activities described here.
- Section 4612(b)4 The city or county can have land use and zoning requirements applicable to massage establishments *as long as* the requirements are no different than requirements that are uniformly applicable to other professional or personal service businesses.
- Section 4612(b)5 Local building code or facility requirements applicable to establishments can't require additional restrooms, shower, or other facilities that aren't uniformly applicable to other professional or personal service businesses - nor can the requirements be such that there are unlocked doors when no staff is available to assure security for clients and employees or require windows with a view into massage rooms.

- Section 4612(b)6 The city or county can adopt reasonable health and safety requirements, including requirements for cleanliness of rooms, towels and linens, and reasonable attire and personal hygiene requirements for therapists (but can't interpret this to authorize medical exams, background checks or other criteria on CAMTC-certified therapists).
- Section 4612(b) 7 (A-C) The city or county CAN still require an application for a business license to operate a massage business or massage establishment and can require completion of an application requesting relevant information. The city or county can make reasonable investigation into the information so provided and deny or restrict a business license if the applicant provided materially false information.
- Section 4612 (c) provides that a massage establishment owner or operator is responsible for the conduct of all employees or independent contractors on its premises. A local ordinance can authorize suspension, revocation or other restriction of a business license issued to a massage business/establishment if a violation of the state law or local ordinance occurs on the premises.
- San Rafael is requiring a "certificate of exemption" for massage businesses in which all therapists are CAMTC certified. If illicit activities occur on the premises, the owner, who is held responsible, can lose the certificate. Once the certificate is revoked, the business is subject to all establishment regulations required of non-exempt massage businesses. This makes it easier to close the business than red light abatement.
- Cotati is proposing a "zoning waiver" which will provide the same type of protection for the city.
- Pacifica requires all CAMTC certified massage therapists to register with the city.
- CMT's and CMP's are required to notify the CAMTC within 30 days of any change of work or home status. Once the information is received, notice goes out to the registered city contact.



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MEETS STANDARDS CURRENTLY ESTABLISHED BY CITIES AND COUNTIES AND ALSO BENEFITS CITIES AND COUNTIES:

I. Meets Standards Established by Cities and Counties:

- Applicants for state certification undergo criminal background checks including fingerprints. (Section 4601.3(a)). CAMTC is mandated to request subsequent arrest notification service from the Department of Justice for all applicants for licensure for whom fingerprints are submitted. (Section 4601.3(d)).
- CAMTC is authorized to investigate the education of applicants, including their certificates of completion (transcripts), and to reject those it determines to be fraudulent. CAMTC may also request additional information regarding an applicant's education if a transcript from a particular school is not deemed sufficient proof of adequate education. (Section 4601(g)(1) and (2)).
- CAMTC is authorized to discipline certificate holders through probation, suspension, revocation, or other means it deems proper. (Section 4601(a)).
- CAMTC is required to permanently revoke the certificate of anyone violating subdivision (b) of Section 647 of the Penal Code of any offense described in subdivision (h) of Section 4603. The law requires the CAMTC to immediately suspend the certificate, notify the certificate holder and any business employing the certificate holder of such suspension. Upon notice that the charges have resulted in a conviction, the CAMTC has authority to revoke the certificate. (Section 4602(c)).
- CAMTC is authorized to deny or revoke certificates for unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions. (Section 4603(a)).
- CAMTC may also deny or revoke a certificate for the following: procuring a certificate by fraud, misrepresentation, or mistake; violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of the law or any rule or bylaw adopted by the organization; conviction of any felony, or conviction of a misdemeanor that is substantially related to the qualifications or duties of a certificate holder, in which event the record of the conviction shall be conclusive evidence of the crime; impersonating an applicant or acting as a proxy for an applicant in any examination referred to under the law for the issuance of a certificate; impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate; committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder; committing any act punishable as a sexually related crime. (Section 4603(a)-(h)).
- It is an unfair business practice to state that one is certified, registered or licensed by a governmental agency (the CAMTC is a private not-for-profit with legislative oversight) as a massage therapist or practitioner. (Section 4605).
- It is an unfair business practice for any person to hold oneself out or use the title of "certified massage therapist" or "certified massage practitioner" or any other term, such as "licensed," "registered," or "CMT," that implies or suggests that the person is certified as a massage therapist or practitioner without meeting the requirements of the law. (Section 4606).

-: Attachment D - B&P Code 10.5 (2287 : Massage Ordinance Revision)

II. Allows Cities and Counties to Know Who is Practicing in Their Jurisdiction:

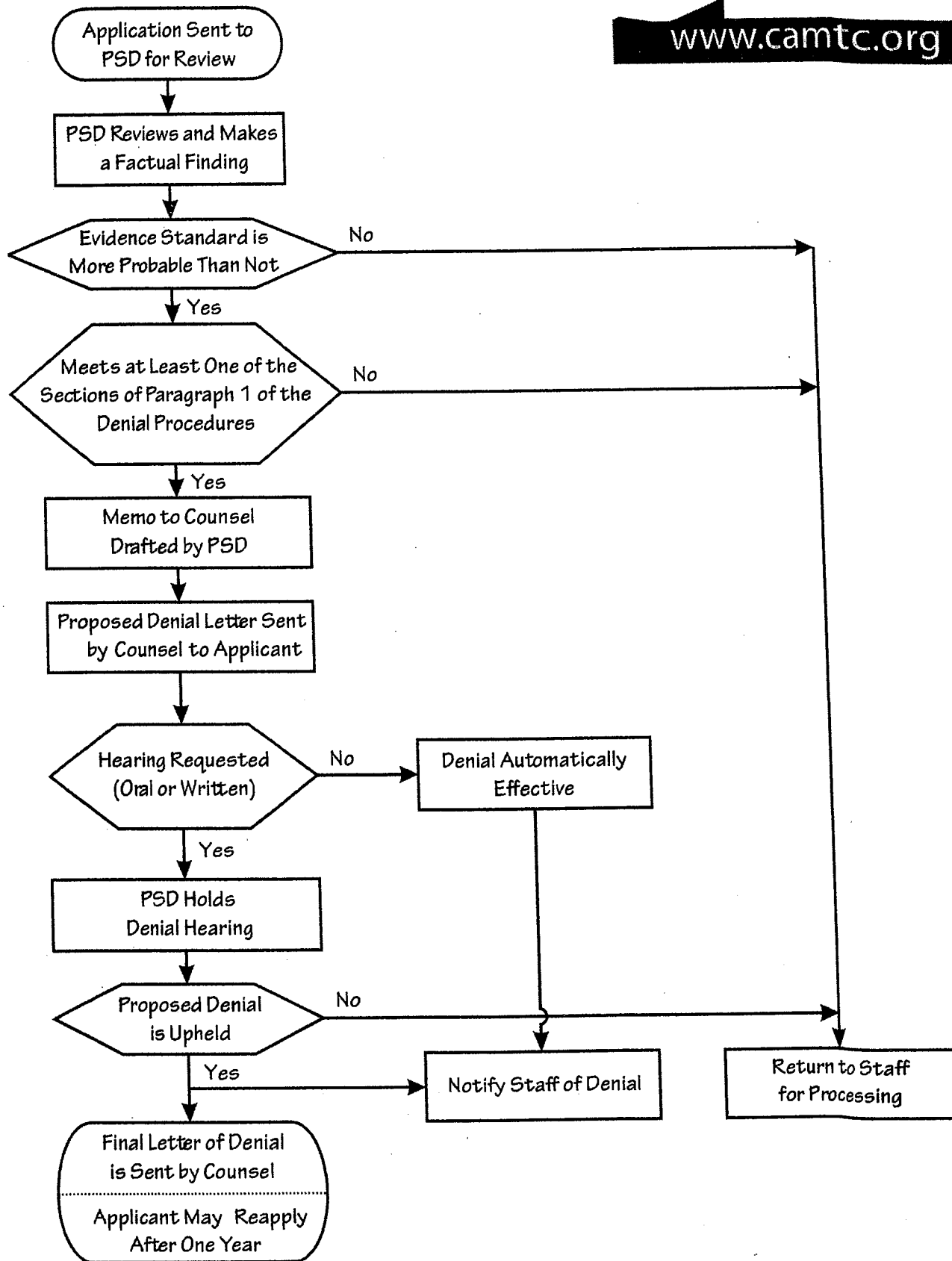
- Section 4600 gives CAMTC broad authority to share information with local authorities. The CAMTC is authorized to provide to local authorities information concerning a certificate holder, including but not limited to, the current status of the certificate holder, address of the certificate holder (home and work), history of disciplinary actions against the certificate holder (including revocation), and any other information necessary to verify facts relevant to administering a local ordinance (Section 4602.5(a)).
- CAMTC must also accept information provided by local authorities, and has a responsibility to review information received and take action warranted by that information. (Section 4602.5(b)).
- CAMTC is required to request subsequent arrest notification service from the Department of Justice for all applicants for licensure. (Section 4601.3(d)). CAMTC can share this information with local authorities, as stated above.

III. Important Authority Retained by Cities and Counties under SECTION 4600

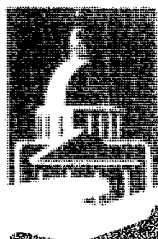
- Cities and counties retain authority over any person not certified pursuant to Section 4600. (Section 4613(a)).
- Section 4600 specifies that the superior court in and for the county in which any person acts as a massage practitioner or massage therapist in violation of the provisions of the law, may, upon a petition by any person, issue an injunction or other appropriate order restraining the conduct. The proceedings under this paragraph shall be governed by Chapter 3 (commencing with Section 525) of Title 7 of Part 2 of the Code of Civil Procedure. (Section 4607).
- A city or county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to: (Section 4612(b)(6)).
 - ✓ Cleanliness of rooms
 - ✓ Cleanliness of towels and linens
 - ✓ Reasonable attire and personal hygiene requirements
- A city or county may require an applicant for a business license to operate a massage establishment to fill out an application providing relevant information and make reasonable investigation into the information provided. (Section 4612(b)(7)).
- Local authorities can deny or restrict a business license if the applicant has provided materially false information (Section 4612(b)(7)).
- The owner/operator of a massage establishment is responsible for the conduct of all employees or independent contractors working on the premises. Local authorities can still suspend, revoke or otherwise restrict the license issued to a massage establishment for violations of Section 4600 or local ordinances. (Section 4612(c)).
- Local authorities may have and enforce an ordinance that is applicable to massage businesses or establishments that provides duly authorized officials of the city or county the right to conduct reasonable inspections during regular business hours, to ensure compliance with the law, the local ordinance, or other applicable fire and health and safety requirements. Such ordinances may require an owner or operator to notify the city or county of any intention to rename, change management, or convey the business to another person. (Section 4612(d)).
- Local authorities may require a massage establishment to maintain on its premises for review evidence demonstrating that all persons providing massage services are certified. A local authority may require a business to file copies or provide other evidence of the certificates held by persons providing massage services at the business. Section 4612(b)(2)(A)-(B).
- Cities and counties may adopt land use and zoning requirements applicable to massage establishments provided that the requirements are no different than those uniformly applied to other professional or personal services businesses. (Section 4612(b)((4)).

CAMTC Review Process

Professional Standards Division



-: Attachment D - B&P Code 10.5 (2287 : Massage Ordinance Revision)



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REQUIREMENTS FOR CCMP CERTIFICATION

Starting January 31, 2011, applicants seeking a Conditional CMP (CCMP) certificate with 100-249 hours of massage education completed after March 15, 2010, must submit a transcript from an **approved school whose 100-249 hour entry-level program was specifically approved by BPPE or BPPVE.**

Please note that no applications for CCMP certification will be accepted after December 31, 2011. Starting January 1, 2012, all applicants will need a minimum of 250 hours of massage education at an approved school to be considered for CAMTC certification.

RESPONSIBILITIES FOR CCMP CERTIFICATE HOLDERS

In order to maintain your Conditional Certification as a Massage Practitioner (CCMP), you are required to provide evidence of a minimum of 30 hours of continuing massage education each year, until your total massage education totals 250 hours. Once you have completed a minimum of 250 hours of massage education, you must apply for an upgrade to CMP. You may apply for an upgrade at the time you reach 250 hours or at the time of your next renewal.

If you are unsure where to obtain your continuing education, visit the National Certification Board for Therapeutic Massage & Bodywork (www.ncbtmb.org/ceproviders.php) or Bureau for Private Postsecondary Education (www.bppe.ca.gov) for a list of providers/schools. Please note: not all transcripts will serve as sole proof of education, so please check our website regularly for a list of schools where additional proof of education, beyond a transcript, will be requested.

BILL NUMBER: AB 619 CHAPTERED
BILL TEXT

CHAPTER 162
FILED WITH SECRETARY OF STATE AUGUST 3, 2011
APPROVED BY GOVERNOR AUGUST 3, 2011
PASSED THE SENATE JULY 11, 2011
PASSED THE ASSEMBLY JULY 14, 2011
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AMENDED IN SENATE JUNE 7, 2011
AMENDED IN SENATE JUNE 2, 2011
AMENDED IN ASSEMBLY APRIL 25, 2011
AMENDED IN ASSEMBLY APRIL 13, 2011
AMENDED IN ASSEMBLY MARCH 31, 2011

INTRODUCED BY Assembly Member Halderman

FEBRUARY 16, 2011

An act to amend Sections 4600, 4600.5, 4601, 4601.3, 4601.4, 4602, 4602.5, 4603, 4603.1, 4603.5, 4604, 4612, and 4615 of, and to add Sections 4603.7 and 4616 to, the Business and Professions Code, relating to massage therapy.

LEGISLATIVE COUNSEL'S DIGEST

AB 619, Halderman. Massage therapy.

(1) Existing law, until January 1, 2015, provides for the voluntary certification of massage practitioners and massage therapists by a nonprofit Massage Therapy Organization, as defined. Existing law requires the initial board of directors to, among other things, establish the organization.

This bill would specify that the Massage Therapy Organization is to be known as the California Massage Therapy Council, as defined.

(2) Existing law requires applicants for initial certification as massage practitioners and massage therapists to pay a specified fee and meet certain educational requirements.

This bill would require a certificate holder to include certain identifying information in any advertising, and to display his or her certificate at his or her place of business.

(3) Existing law prohibits the holder of a certificate or a certificate applicant from being disciplined or denied a certificate unless certain procedural requirements are met. Existing law requires actions challenging a denial or discipline to be commenced within a year after the date of the denial or discipline. Under existing law, applicants and certificate holders are liable for charges incurred before the certificate denial or certificate holder discipline, or other specified charges.

This bill would delete that liability requirement and would require the council to be sued only in the county of its principal office.

(4) Existing law prohibits a city, county, or city and county from enacting an ordinance, or enforcing an existing ordinance, that requires a license, permit, or other authorization to practice massage by an individual who is certified pursuant to existing law, as specified.

This bill would instead prohibit those local governments from

enacting an ordinance or enforcing an existing ordinance that requires a license, permit, or other authorization to provide massage for compensation against an individual certified under existing state law or against a massage business or massage establishment that employs or uses only persons who are so certified.

Existing law authorizes a city, county, or city and county to charge a massage business or massage establishment a business licensing fee sufficient to cover the costs of the licensing activities, as specified.

This bill would require that the fee be no different than the fee that is uniformly applied to all other individuals and businesses providing professional services, as defined and specified.

Existing law authorizes a city, county, or city and county to require a background check of any person certified to practice massage.

This bill would authorize such a background check of an owner of 5% or more of a massage business or massage establishment, as specified.

The bill would make various conforming changes, including with regard to the failure of an owner or operator of a massage business or establishment to comply with the provisions that apply to the practice of massage therapy.

THE PEOPLE OF THE STATE OF CALIFORNIA DO ENACT AS FOLLOWS:

SECTION 1. Section 4600 of the Business and Professions Code is amended to read:

4600. As used in this chapter, the following terms shall have the following meanings:

(a) "Approved school" or "approved massage school" means a school approved by the council that meets minimum standards for training and curriculum in massage and related subjects and that meets any of the following requirements:

(1) Is approved by the Bureau for Private Postsecondary Education.

(2) Is approved by the Department of Consumer Affairs.

(3) Is an institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior Colleges of the Western Association of Schools and Colleges and that is one of the following:

(A) A public institution.

(B) An institution incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, and that is not managed by any entity for profit.

(C) A for-profit institution.

(D) An institution that does not meet all of the criteria in subparagraph (B) that is incorporated and lawfully operating as a nonprofit public benefit corporation pursuant to Part 2 (commencing with Section 5110) of Division 2 of Title 1 of the Corporations Code, that has been in continuous operation since April 15, 1997, and that is not managed by any entity for profit.

(4) Is a college or university of the state higher education system, as defined in Section 100850 of the Education Code.

(5) Is a school of equal or greater training that is recognized by the corresponding agency in another state or accredited by an agency recognized by the United States Department of Education.

(b) "Compensation" means the payment, loan, advance, donation, contribution, deposit, or gift of money or anything of value.

(c) "Massage therapist," "bodyworker," "bodywork therapist," or "massage and bodywork therapist" means a person who is certified by the California Massage Therapy Council under subdivision (c) of Section 4601 and who administers massage for compensation.

(d) "Massage practitioner," "bodywork practitioner," or "massage and bodywork practitioner" means a person who is certified by the California Massage Therapy Council under subdivision (b) of Section 4601 and who administers massage for compensation.

(e) "Council" means the California Massage Therapy Council created pursuant to this chapter, which shall be a nonprofit organization exempt from taxation under Section 501(c)(3) of Title 26 of the United States Code. The council may commence activities as authorized by this section once it has submitted a request to the Internal Revenue Service seeking this exemption. Whenever the term "organization" is used in this chapter, it shall mean the council, except where the context indicates otherwise.

(f) "Registered school" means a school approved by the council that meets minimum standards for training and curriculum in massage and related subjects and that either is approved by the Bureau for Private Postsecondary Education or the Department of Consumer Affairs, or is an institution accredited by the senior commission or the junior commission of the Western Association of Schools and Colleges as defined in paragraph (3) of subdivision (a), is a college or university of the state higher education system as defined in Section 100850 of the Education Code, or is a school of equal or greater training that is approved by the corresponding agency in another state.

(g) For purposes of this chapter, the terms "massage" and "bodywork" shall have the same meaning.

SEC. 2. Section 4600.5 of the Business and Professions Code is amended to read:

4600.5. (a) The California Massage Therapy Council, as defined in subdivision (e) of Section 4600, shall be created and shall have the responsibilities and duties set forth in this chapter. The council may take any reasonable actions to carry out the responsibilities and duties set forth in this chapter, including, but not limited to, hiring staff and entering into contracts.

(b) (1) The council shall be governed by a board of directors made up of two representatives selected by each professional society, association, or other entity, whose membership is comprised of massage therapists and that chooses to participate in the council. To qualify, a professional society, association, or other entity shall have a dues-paying membership in California of at least 1,000 individuals for the last three years, and shall have bylaws that require its members to comply with a code of ethics. The board of directors shall also include each of the following persons:

(A) One member selected by each statewide association of private postsecondary schools incorporated on or before January 1, 2010, whose member schools have together had at least 1,000 graduates in each of the previous three years from massage therapy programs meeting the approval standards set forth in subdivision (a) of Section 4600, except from those qualifying associations that choose not to exercise this right of selection.

(B) One member selected by the League of California Cities, unless that entity chooses not to exercise this right of selection.

(C) One member selected by the California State Association of Counties, unless that entity chooses not to exercise this right of selection.

(D) One member selected by the Director of Consumer Affairs, unless that entity chooses not to exercise this right of selection.

(E) One member appointed by the Office of the Chancellor of the California Community Colleges, unless that entity chooses not to exercise this right of selection. The person appointed, if any, shall not be part of any massage therapy certificate or degree program.

The council's bylaws shall establish a process for appointing other professional directors as determined by the board.

(2) The initial board of directors shall establish the council, initiate the request for tax-exempt status from the Internal Revenue Service, and solicit input from the massage community concerning the operations of the council. The initial board of directors, in its discretion, may immediately undertake to issue the certificates authorized by this chapter after adopting the necessary bylaws or other rules, or may establish by adoption of bylaws the permanent governing structure prior to issuing certificates.

(c) The board of directors shall establish fees reasonably related to the cost of providing services and carrying out its ongoing responsibilities and duties. Initial and renewal fees shall be established by the board of directors annually.

(d) The meetings of the council shall be subject to the rules of the Bagley-Keene Open Meeting Act (Article 9 (commencing with Section 11120) of Chapter 1 of Part 1 of Division 3 of Title 2 of the Government Code).

SEC. 3. Section 4601 of the Business and Professions Code is amended to read:

4601. (a) The council shall issue a certificate under this chapter to an applicant who satisfies the requirements of this chapter.

(b) (1) In order to obtain certification as a massage practitioner, an applicant shall submit a written application and provide the council with satisfactory evidence that he or she meets all of the following requirements:

(A) The applicant is 18 years of age or older.

(B) The applicant has successfully completed, at a single approved school, curricula in massage and related subjects totaling a minimum of 250 hours that incorporates appropriate school assessment of student knowledge and skills. Included in the hours shall be instruction addressing anatomy and physiology, contraindications, health and hygiene, and business and ethics, with at least 100 hours of the required minimum 250 hours devoted to these curriculum areas.

(C) All fees required by the council have been paid.

(2) New certificates shall not be issued pursuant to this subdivision after December 31, 2015. Certificates issued pursuant to this section or subdivision (a) or (c) of Section 4604 on or before December 31, 2015, shall, after December 31, 2015, be renewed without any additional educational requirements, provided that the certificate holder continues to be qualified pursuant to this chapter.

(c) In order to obtain certification as a massage therapist, an applicant shall submit a written application and provide the council with satisfactory evidence that he or she meets all of the following requirements:

(1) The applicant is 18 years of age or older.

(2) The applicant satisfies at least one of the following requirements:

(A) He or she has successfully completed the curricula in massage and related subjects totaling a minimum of 500 hours. Of this 500 hours, a minimum of 250 hours shall be from approved schools. The remaining 250 hours required may be secured either from approved or registered schools, or from continuing education providers approved by, or registered with, the council or the Department of Consumer

Affairs. After December 31, 2015, applicants may only satisfy the curricula in massage and related subjects from approved schools.

(B) The applicant has passed a massage and bodywork competency assessment examination that meets generally recognized psychometric principles and standards, and that is approved by the board. The successful completion of this examination may have been accomplished before the date the council is authorized by this chapter to begin issuing certificates.

(3) All fees required by the council have been paid.

(d) The council shall issue a certificate to an applicant who meets the other qualifications of this chapter and holds a current and valid registration, certification, or license from any other state whose licensure requirements meet or exceed those defined within this chapter. The council shall have discretion to give credit for comparable academic work completed by an applicant in a program outside of California.

(e) An applicant applying for a massage therapist certificate shall file with the council a written application provided by the council, showing to the satisfaction of the council that he or she meets all of the requirements of this chapter.

(f) Any certification issued under this chapter shall be subject to renewal every two years in a manner prescribed by the council, and shall expire unless renewed in that manner. The council may provide for the late renewal of a license.

(g) (1) The council shall have the responsibility to determine that the school or schools from which an applicant has obtained the education required by this chapter meet the requirements of this chapter. If the council has any reason to question whether or not the applicant received the education that is required by this chapter from the school or schools that the applicant is claiming, the council shall investigate the facts to determine that the applicant received the required education prior to issuing a certificate.

(2) For purposes of paragraph (1) and any other provision of this chapter for which the council is authorized to receive factual information as a condition of taking any action, the council shall have the authority to conduct oral interviews of the applicant and others or to make any investigation deemed necessary to establish that the information received is accurate and satisfies any criteria established by this chapter.

SEC. 4. Section 4601.3 of the Business and Professions Code is amended to read:

4601.3. (a) Prior to issuing a certificate to the applicant or designating a custodian of records, the council shall require the applicant or the custodian of records candidate to submit fingerprint images in a form consistent with the requirements of this section. The council shall submit the fingerprint images and related information to the Department of Justice for the purpose of obtaining information as to the existence and nature of a record of state and federal level convictions and of state and federal level arrests for which the Department of Justice establishes that the applicant or candidate was released on bail or on his or her own recognizance pending trial. Requests for federal level criminal offender record information received by the Department of Justice pursuant to this section shall be forwarded to the Federal Bureau of Investigation by the Department of Justice. The Department of Justice shall review the information returned from the Federal Bureau of Investigation, and shall compile and disseminate a fitness determination regarding the applicant or candidate to the council.

(b) The Department of Justice shall provide information to the council pursuant to subdivision (p) of Section 11105 of the Penal

Code.

(c) The Department of Justice and the council shall charge a fee sufficient to cover the cost of processing the request for state and federal level criminal offender record information.

(d) The council shall request subsequent arrest notification service from the Department of Justice, as provided under Section 11105.2 of the Penal Code, for all applicants for licensure or custodian of records candidates for whom fingerprint images and related information are submitted to conduct a search for state and federal level criminal offender record information.

(e) This section shall become operative September 1, 2009.

SEC. 5. Section 4601.4 of the Business and Professions Code is amended to read:

4601.4. Council directors, employees, or volunteer individuals may undergo the background investigation process delineated in Section 4601.3.

SEC. 6. Section 4602 of the Business and Professions Code is amended to read:

4602. (a) The council may discipline a certificate holder by any, or a combination, of the following methods:

- (1) Placing the certificate holder on probation.
- (2) Suspending the certificate and the rights conferred by this chapter on a certificate holder for a period not to exceed one year.
- (3) Revoking the certificate.
- (4) Suspending or staying the disciplinary order, or portions of it, with or without conditions.
- (5) Taking other action as the council, as authorized by this chapter or its bylaws, deems proper.

(b) The council may issue an initial certificate on probation, with specific terms and conditions, to any applicant.

(c) (1) Notwithstanding any other provision of law, if the council receives notice that a certificate holder has been arrested and charges have been filed by the appropriate prosecuting agency against the certificate holder alleging a violation of subdivision (b) of Section 647 of the Penal Code or any other offense described in subdivision (h) of Section 4603, the council shall take all of the following actions:

(A) Immediately suspend, on an interim basis, the certificate of that certificate holder.

(B) Notify the certificate holder within 10 days at the address last filed with the council that the certificate has been suspended, and the reason for the suspension.

(C) Notify any business within 10 days that the council has in its records as employing the certificate holder that the certificate has been suspended.

(2) Upon notice to the council that the charges described in paragraph (1) have resulted in a conviction, the suspended certificate shall become subject to permanent revocation. The council shall provide notice to the certificate holder within 10 days that it has evidence of a valid record of conviction and that the certificate will be revoked unless the certificate holder provides evidence within 15 days that the conviction is either invalid or that the information is otherwise erroneous.

(3) Upon notice that the charges have resulted in an acquittal, or have otherwise been dismissed prior to conviction, the certificate shall be immediately reinstated and the certificate holder and any business that received notice pursuant to subparagraph (C) of paragraph (1) shall be notified of the reinstatement within 10 days.

SEC. 7. Section 4602.5 of the Business and Professions Code is amended to read:

4602.5. (a) Upon the request of any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses, the council shall provide information concerning a certificate holder, including, but not limited to, the current status of the certificate, any history of disciplinary actions taken against the certificate holder, the home and work addresses of the certificate holder, and any other information in the council's possession that is necessary to verify facts relevant to administering the local ordinance.

(b) The council shall accept information provided by any law enforcement agency or any other representative of a local government agency with responsibility for regulating, or administering a local ordinance relating to, massage or massage businesses. The council shall have the responsibility to review any information received and to take any actions authorized by this chapter that are warranted by that information.

SEC. 8. Section 4603 of the Business and Professions Code is amended to read:

4603. It is a violation of this chapter for a certificate holder to commit, and the council may deny an application for a certificate or discipline a certificate holder for, any of the following:

(a) Unprofessional conduct, including, but not limited to, denial of licensure, revocation, suspension, restriction, or any other disciplinary action against a certificate holder by another state or territory of the United States, by any other government agency, or by another California health care professional licensing board. A certified copy of the decision, order, or judgment shall be conclusive evidence of these actions.

(b) Procuring a certificate by fraud, misrepresentation, or mistake.

(c) Violating or attempting to violate, directly or indirectly, or assisting in or abetting the violation of, or conspiring to violate, any provision or term of this chapter or any rule or bylaw adopted by the council.

(d) Conviction of any felony, or conviction of a misdemeanor that is substantially related to the qualifications or duties of a certificate holder, in which event the record of the conviction shall be conclusive evidence of the crime.

(e) Impersonating an applicant or acting as a proxy for an applicant in any examination referred to under this chapter for the issuance of a certificate.

(f) Impersonating a certified practitioner or therapist, or permitting or allowing an uncertified person to use a certificate.

(g) Committing any fraudulent, dishonest, or corrupt act that is substantially related to the qualifications or duties of a certificate holder.

(h) Committing any act punishable as a sexually related crime.

SEC. 9. Section 4603.1 of the Business and Professions Code is amended to read:

4603.1. (a) No certificate holder or certificate applicant may be disciplined or denied a certificate pursuant to Section 4603 except according to procedures satisfying the requirements of this section. A denial or discipline not in accord with this section or subdivision (c) of Section 4602 shall be void and without effect.

(b) Any certificate applicant denial or certificate holder discipline shall be done in good faith and in a fair and reasonable manner. Any procedure that conforms to the requirements of subdivision (c) is fair and reasonable, but a court may also find other procedures to be fair and reasonable when the full

circumstances of the certificate denial or certificate holder discipline are considered.

(c) A procedure is fair and reasonable when the procedures in subdivision (c) of Section 4602 are followed, or if all of the following apply:

(1) The provisions of the procedure have been set forth in the articles or bylaws, or copies of those provisions are sent annually to all the members as required by the articles or bylaws.

(2) It provides the giving of 15 days prior notice of the certificate denial or certificate holder discipline and the reasons therefor.

(3) It provides an opportunity for the certificate applicant or certificate holder to be heard, orally or in writing, not less than five days before the effective date of the certificate denial or certificate holder discipline by a person or body authorized to decide that the proposed certificate denial or certificate holder discipline not take place.

(d) Any notice required under this section may be given by any method reasonably calculated to provide actual notice. Any notice given by mail must be given by first-class or certified mail sent to the last address of the certificate applicant or certificate holder shown on the council's records.

(e) Any action challenging a certificate denial or certificate holder discipline, including any claim alleging defective notice, shall be commenced within one year after the date of the certificate denial or certificate holder discipline. If the action is successful, the court may order any relief, including reinstatement, that it finds equitable under the circumstances.

(f) This section governs only the procedures for certificate denial or certificate holder discipline and not the substantive grounds therefor. A certificate denial or certificate holder discipline based upon substantive grounds that violates contractual or other rights of the member or is otherwise unlawful is not made valid by compliance with this section.

(g) The council shall be sued only in the county of its principal office.

SEC. 10. Section 4603.5 of the Business and Professions Code is amended to read:

4603.5. It shall be the responsibility of any certificate holder to notify the council of his or her home address, as well as the address of any business establishment where he or she regularly works as a massage therapist or massage practitioner, whether as an employee or as an independent contractor. A certificate holder shall notify the council within 30 days of changing either his or her home address or the address of the business establishment where he or she regularly works as a massage therapist or massage practitioner.

SEC. 11. Section 4603.7 is added to the Business and Professions Code, to read:

4603.7. A certificate holder shall include the name under which he or she is certified and his or her certificate number in any and all advertising and shall display his or her certificate at his or her place of business.

SEC. 12. Section 4604 of the Business and Professions Code is amended to read:

4604. (a) Notwithstanding Section 4601, the council may grant a massage practitioner certificate to any person who applies on or before January 1, 2012, with one of the following:

(1) A current valid massage permit or license from a California city, county, or city and county and documentation evidencing that the person has completed at least a 100-hour course in massage at an

approved or registered school, or out-of-state school recognized by the council as providing comparable education, has been practicing for at least three years, and has provided at least 1,000 hours of massage to members of the public for compensation.

(2) Documentation evidencing that the person has completed at least a 100-hour course in massage at an approved or registered school, or out-of-state school recognized by the council as providing comparable education, has been practicing for at least three years, and has provided at least 1,750 hours of massage to members of the public for compensation. For purposes of this subdivision, evidence of practice shall include either of the following:

(A) A W-2 form or employer's affidavit containing the dates of the applicant's employment.

(B) Tax returns indicating self-employment as a massage practitioner or massage therapist or any other title that may demonstrate experience in the field of massage.

(3) Documentation evidencing that the person holds a current valid certificate of authorization as an instructor at an approved massage school, or holds the position of a massage instructor at a school accredited by an agency recognized by the United States Department of Education, or colleges and universities of the state higher education system, as defined in Section 100850 of the Education Code.

(b) (1) After reviewing the information submitted under subdivision (a), the council may require additional information necessary to enable it to determine whether to issue a certificate.

(2) If an applicant under paragraph (1) of subdivision (a) or paragraph (1) of subdivision (c) has not complied with Section 4601.3, or its equivalent, when obtaining a license or permit from the city, county, or city and county, the council shall require the applicant to comply with Section 4601.3 prior to issuing a certificate pursuant to this section.

(c) (1) A person applying for a massage practitioner certificate on or before January 1, 2012, who meets the educational requirements of either paragraph (1) or (2) of subdivision (a), but who has not completed the required number of practice hours prior to submitting an application pursuant to this section, may apply for a conditional certificate.

(2) An applicant for a conditional certificate shall, within five years of being issued the conditional certificate, be required to complete at least 30 hours of additional education per year from schools or courses described in paragraph (5) until he or she has completed a total of at least 250 hours of education, which may include massage education hours previously completed in a massage course described in either paragraph (1) or (2) of subdivision (a).

(3) Upon successful completion of the requirements of this subdivision, the council shall issue a certificate to the person that is not conditional.

(4) A conditional certificate issued to any person pursuant to this subdivision shall immediately be nullified, without need for further action by the council, if the time period specified in paragraph (2) expires without proof of completion of the requirements having been filed with the council.

(5) Any additional education required by this section may be completed through courses provided by any of the following:

(A) An approved school.

(B) A registered school.

(C) A provider approved by, or registered with, the council or the Department of Consumer Affairs.

(D) A provider that establishes to the satisfaction of the council

that its course or courses are appropriate educational programs for this purpose.

(d) Nothing in this section shall preclude the council from exercising any power or authority conferred by this chapter with respect to a conditional certificate holder.

SEC. 13. Section 4612 of the Business and Professions Code is amended to read:

4612. (a) (1) The holder of a certificate issued pursuant to this chapter shall have the right to practice massage, consistent with this chapter and the qualifications established by his or her certification, in any city, county, or city and county in this state and shall not be required to obtain any other license, permit, or other authorization, except as provided in this section, to engage in that practice.

(2) Notwithstanding any other provision of law, a city, county, or city and county shall not enact an ordinance that requires a license, permit, or other authorization to provide massage for compensation by an individual who is certified pursuant to this chapter and who is practicing consistent with the qualifications established by his or her certification, or by a massage business or massage establishment that employs or uses only persons who are certified pursuant to this chapter to provide massage for compensation. No provision of any ordinance enacted by a city, county, or city and county that is in effect before the effective date of this chapter, and that requires a license, permit, or other authorization to provide massage for compensation, may be enforced against an individual who is certified pursuant to this chapter or against a massage business or massage establishment that employs or uses only persons who are certified pursuant to this chapter to provide massage for compensation.

(3) Except as provided in subdivision (b), nothing in this section shall be interpreted to prevent a city, county, or city and county from adopting or enforcing any local ordinance that provides for reasonable health and safety requirements for massage establishments or businesses. Subdivision (b) shall not apply to any massage establishment or business that employs or uses persons to provide massage services who are not certified pursuant to this chapter.

(b) (1) This subdivision shall apply only to massage establishments or businesses that are sole proprietorships, where the sole proprietor is certified pursuant to this chapter, and to massage establishments or businesses that employ or use only persons certified pursuant to this chapter to provide massage services. For purposes of this subdivision, a sole proprietorship is a business where the owner is the only person employed by that business to provide massage services.

(2) (A) Any massage establishment or business described in paragraph (1) shall maintain on its premises evidence for review by local authorities that demonstrates that all persons providing massage services are certified.

(B) Nothing in this section shall preclude a city, county, or city and county from including in a local ordinance a provision that requires a business described in paragraph (1) to file copies or provide other evidence of the certificates held by the persons who are providing massage services at the business.

(3) A city, county, or city and county may charge a massage business or establishment a business licensing fee, provided that the fee shall be no different than the fee that is uniformly applied to all other individuals and businesses providing professional services, as defined in subdivision (a) of Section 13401 of the Corporations

Code.

(4) Nothing in this section shall prohibit a city, county, or city and county from enacting ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits, or zoning requirements applicable to an individual certified pursuant to this chapter or to a massage establishment or business that uses only individuals who are certified pursuant to this chapter to provide massage for compensation, provided that, unless otherwise exempted by this chapter, these ordinances, regulations, rules, requirements, restrictions, land use regulations, moratoria, conditional use permits, and zoning requirements shall be no different than the requirements that are uniformly applied to all other individuals and businesses providing professional services, as defined in subdivision (a) of Section 13401 of the Corporations Code. No provision of any ordinance, regulation, rule, requirement, restriction, land use regulation, moratoria, conditional use permit, or zoning requirement enacted by a city, county, or city and county that is in effect before the effective date of this chapter, and that is inconsistent with this paragraph, may be enforced against an individual who is certified pursuant to this chapter or against a massage business or massage establishment that uses only individuals who are certified pursuant to this chapter to provide massage for compensation.

(5) Local building code or physical facility requirements applicable to massage establishments or businesses shall not require additional restroom, shower, or other facilities that are not uniformly applicable to other professional or personal service businesses, nor shall building or facility requirements be adopted that (A) require unlocked doors when there is no staff available to ensure security for clients and massage staff who are behind closed doors, or (B) require windows that provide a view into massage rooms that interfere with the privacy of clients of the massage business.

(6) A city, county, or city and county may adopt reasonable health and safety requirements with respect to massage establishments or businesses, including, but not limited to, requirements for cleanliness of massage rooms, towels and linens, and reasonable attire and personal hygiene requirements for persons providing massage services, provided that nothing in this paragraph shall be interpreted to authorize adoption of local ordinances that impose additional qualifications, such as medical examinations, background checks, or other criteria, upon any person certified pursuant to this chapter.

(7) Nothing in this section shall preclude a city, county, or city and county from doing any of the following:

(A) Requiring an applicant for a business license to operate a massage business or establishment to fill out an application that requests the applicant to provide relevant information.

(B) Making reasonable investigations into the information so provided.

(C) Denying or restricting a business license if the applicant has provided materially false information.

(c) An owner or operator of a massage business or establishment subject to subdivision (b) shall be responsible for the conduct of all employees or independent contractors working on the premises of the business. Failure to comply with this chapter may result in revocation of the owner's or operator's certificate in accordance with Section 4603. Nothing in this section shall preclude a local ordinance from authorizing suspension, revocation, or other restriction of a license or permit issued to a massage establishment or business if violations of this chapter, or of the local ordinance,

occur on the business premises.

(d) Nothing in this section shall preclude a city, county, or city and county from adopting a local ordinance that is applicable to massage businesses or establishments described in paragraph (1) of subdivision (b) and that does either of the following:

(1) Provides that duly authorized officials of the city, county, or city and county have the right to conduct reasonable inspections, during regular business hours, to ensure compliance with this chapter, the local ordinance, or other applicable fire and health and safety requirements.

(2) Requires an owner or operator to notify the city, county, or city and county of any intention to rename, change management, or convey the business to another person.

(e) Nothing in this chapter shall be construed to preclude a city, county, or city and county from requiring a background check of an owner or operator of a massage establishment who owns 5 percent or more of a massage business or massage establishment and who is not certified pursuant to this chapter. The background check may consist of an application that requires the applicant to state information, including, but not limited to, the applicant's business, occupation, and employment history for the five years preceding the date of application, the inclusive dates of same, and the name and address of any massage business or other like establishment owned or operated by any person who is subject to the background check requirement of this subdivision.

SEC. 14. Section 4615 of the Business and Professions Code is amended to read:

4615. This chapter shall be subject to the review required by Article 7.5 (commencing with Section 9147.7) of Chapter 1.5 of Part 1 of Division 2 of the Government Code.

SEC. 15. Section 4616 is added to the Business and Professions Code, to read:

4616. This chapter shall be liberally construed to effectuate its purposes. If any provision of this chapter or the application thereof to any person or circumstance is held to be invalid, the invalidity shall not affect other provisions or applications of the chapter that can be given effect without the invalid provision or application, and to this end the provisions of this chapter are severable.

*****Proposed Massage Municipal Code*****

4.54.010 Purpose and intent.

It is the purpose and intent of this chapter to provide for the orderly regulation of massage establishments and massage technicians, as defined in this chapter, in the interests of the public health, safety, and welfare by providing certain minimum building, sanitation and health standards for massage establishments, and by providing certain minimum qualifications for the operators of massage establishments and for massage technicians and massage technician trainees. Unless otherwise indicated, the requirements of this Code shall not apply to massage practitioners and therapists certified by the California Massage Therapy Council (CAMTC) or establishments in which the practitioners are all CAMTC certified.

4.54.020 Definitions.

(a) For the purpose of this chapter, unless the context clearly requires a different meaning, the words, terms and phrases set forth in this section shall have the meanings given them in this section:

(1) "Massage" means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating or stimulating the external parts of the human body with the hands or with the aid of any mechanical or electrical apparatus, or other appliances or devices, with or without such supplementary aids as rubbing alcohol, liniment, antiseptic, oil, powder, cream, lotion, ointment or other similar preparations.

(2) "Massage technician" means any person who administers massages, baths or health treatments involving massage or baths as the principal functions to another person for any consideration whatsoever.

(3) "Massage technician trainee" means a student who works in a massage establishment under the supervision and direction of a massage technician who has received a permit issued under the provisions of this chapter.

(4) "Massage establishment" means any establishment with more than one massage technician having a fixed place of business where any, firm, association, partnership, corporation, joint venture or combination of individuals engages in, conducts, carries on or permits to be engaged in, conducted or carried on massages, baths or health treatments involving massage or baths, where massage is part of primary function of the business.

(5) "Sole Proprietor Massage establishment" means any owner-operated establishment having a fixed place of business where an individual, carries on or permits to be engaged in, conducted or carried on massages, baths or health treatments involving massage or baths as the principal functions.

(6) "Recognized school of massage" means any school or institution of learning which teaches the theory, ethics, practice, profession and work of massage. The student shall possess a diploma or certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning, and which school has been approved pursuant to California Education Code Section 29025, or, if said school is not located in California, has complied with standards commensurate with those required in said Section 29025. Any school or institution of learning offering or allowing correspondence course credit not requiring actual attendance at class, or courses of a massage technician not approved by the California State Department of Education shall not be deemed a "recognized school of massage."

(7) "Permit" means the permit to engage in the activities of a massage technician or a massage technician trainee as required by this chapter.

(8) "Person" means any individual, firm, association, partnership, corporation, joint venture or combination of individuals.

(9) "California Massage Therapy Council" (CAMTC) means the governing non-profit board that is authorized to evaluate qualifications of massage therapists and issue certification in the State of California.

(10) "Accessory Technician Permit" A technician who is not a sole proprietorship may be eligible to receive an accessory technician permit. This permit will allow massage to be conducted within a business that is not a massage establishment, provided the following requirements are met:

- a. The technician must provide the police department with sufficient evidence to demonstrate that he or she is an independent contractor or an employee of the business.
- b. The business is not in the regular business of providing massage.
- c. The technician must obtain a massage technician permit as required by section 4.54.060 of this code.

4.54.030 Massage establishment permit required.

(a) Except as otherwise provided, it is unlawful for any person to engage in, conduct or carry on, in or upon any premises within the city the operation of massage establishment without a permit obtained from the chief of police, as required by this chapter. A massage establishment permit shall be issued to any person who has complied with the requirements of Sections [4.54.050](#) and [4.54.110](#) of this chapter, and all other applicable provisions of this code or state law, as applicable; unless grounds for denial of

such permit are found to exist. In addition to those set forth in Section [4.04.140](#), grounds for denial include:

- (1) The applicant made a material misstatement in the application for a permit;
- (2) The applicant has, within five years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or any violations of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d), or 647(h) of the California Penal Code, or of any offense involving theft of property or violence;
- (3) That the operation of a massage establishment, as proposed by the applicant if permitted, would not comply with all applicable laws including, but not limited to, all city ordinances and regulations;
- (4) That the operation of the proposed massage establishment is likely to be injurious to the health, safety, welfare, and interest of the people of the city;
- (5) That the applicant is lacking in the background and qualifications to conduct a bona fide massage establishment; or
- (6) That the applicant has violated any provision of this chapter, or of any similar ordinance, law, rule or regulation of another public agency which regulates the operation of massage establishments.
- (7) That the CAMTC has revoked, suspended, or denied the applicant a permit.

4.54.040 Massage establishment permit application fee; renewal

(a) Any application for a permit to operate a massage establishment shall be accompanied by a nonrefundable fee as set forth in the municipal fee schedule. The application fee shall be used to defray, in part, the costs of investigation and report, and is not made in lieu of any other fees or taxes required under this code.

(b) A permit to operate a massage establishment shall be renewed annually. The renewal fee shall be as set forth in the municipal fee schedule. In addition, the massage technician must also submit valid identification, massage certification and a completed new permit application.

4.54.050 Application for massage establishment permit.

(a) Any application for a permit to operate a massage establishment shall be made with the chief of police. Within thirty working days following receipt of a completed application and LiveScan results, the chief of police shall either issue the permit or mail a

written statement of his reasons for denial thereof. The application shall set forth the exact nature of the massage bath or health treatment to be administered, the proposed place of business and facilities therefore, and the name and address of each applicant. The chief of police may request the applicant to allow fingerprints to be taken when needed for the purpose of establishing identification. In addition to the requirements of [Chapter 4.04](#) and this section, any applicant shall furnish the following items:

1. The address of the proposed location
2. The previous addresses of applicant, if any, for a period of three years immediately prior to the date of the application and the dates of residence at each;
3. Written proof that the applicant is at least eighteen years of age;
4. Applicant's height, weight, color of eyes and hair;
5. Two recent passport photos
6. Business, occupation or employment history of the applicant for the three years immediately preceding the date of the application;
7. If the applicant is a corporation, the name of the corporation shall be set forth exactly as shown in its articles of incorporation, together with the names and residence addresses of each of its officers, directors, and each stockholder holding more than five percent of the stock of the corporation. If the applicant is a partnership, the application shall set forth the name and residence address of each of the partners, including limited partners. If one or more of the partners is a corporation, the provisions of this section pertaining to a corporate applicant shall apply;
8. The names and residence addresses of all persons currently employed or intended to be employed in the massage establishment, regardless of the nature of the employment, other than any person permitted pursuant to Section [4.54.060](#), along with the proposed or actual nature of the work performed or to be performed, and recent passport-size photographs, suitable to the police officer or designee processing the application, of each such employee. The chief of police may require such employee to allow fingerprints to be taken for the purpose of identification. Any applicant or permittee shall notify the city in writing of the names, addresses and nature of the work, of any new employees, within five days of such employment, and supply the photographs described in this subsection. Such new employees shall allow fingerprints to be taken for the purpose of identification upon request. "Employee" includes every owner, partner, manager, supervisor and worker, whether paid or not, who renders personal services of any nature in the operation of a massage establishment.
9. Such other information as may be deemed necessary by the chief of police.

(b) Proof of malpractice insurance coverage or equivalent with a minimum of \$100,000 coverage shall be required within 30 days of permit issuance.

4.54.060 Massage technician permit required.

(a) It is unlawful for any person to act as a massage technician or a massage technician trainee unless such person holds a valid permit issued by the chief of police or a certification from the CAMTC. A massage technician permit shall be issued to any person who has fulfilled the requirements of Section [4.54.080](#), and all other provisions of this code or state law, as applicable; unless grounds for denial of such permit are found to exist. In addition to those set forth in Section [4.04.140](#), grounds for denial include:

- (1) The applicant made a material misstatement in the application for a permit;
- (2) The applicant has, within five years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or any violations of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d), or 647(h) of the California Penal Code, or of any offense involving theft of property or violence;
- (3) That the issuance of the permit is likely to be injurious to the health, safety, welfare, and interest of the people of the city;
- (4) That the applicant is lacking in the background and qualifications to act as a massage technician; or
- (5) That the applicant has violated any provision of this chapter, or of any similar ordinance, law, rule or regulation of another public agency which regulates the operation of massage establishments or massage technicians.
- (6) That the CAMTC has revoked, suspended, or denied the applicant a permit.

(b) A permit issued by the chief of police is not required for any massage technician and massage establishments if the owners and all technicians are massage practitioners or therapists, who are operating under a valid certificate issued by the Massage Therapist Organization (also known as the California Massage Therapy Council), per Chapter 10.5 (Commencing with Section 4600) of Division 2 of the California Business and Professions Code relating to massage therapy, provided however, that such person and business shall not be exempted from this Article if Chapter 10.5 is repealed. However notification of the CAMTC certification number must still be made to the police department where the CAMTC permit holder is working.

4.54.065 Education Requirements

(a) General educational requirements. Except as indicated below, all applicants for a Massage Technician permit must meet the following educational standards to qualify for such permit, at the discretion of the Chief of Police:

- (1) Possession of a diploma or certificate of completion from a “recognized school of massage” which shows satisfactory completion of a resident course of study of

a minimum of two hundred (200) verifiable hours on the theory, ethics, history, practice, and/or methods of massage therapy, including the study of anatomy, physiology and hygiene.

(b) Exemptions from educational requirements. The following persons are exempt from the educational requirements set forth in subsection (a) above:

(1) Holders of Massage Establishment business permits and Massage Technician business permits issued by the City before the effective date of this Chapter shall have a period of eighteen (18) months from the effective date of this Chapter to satisfy the educational requirements set forth in subsection (a) above.

(2) Eighteen (18) months from the effective date of this ordinance, any therapist who does not have the required 200 hours of education will not be permitted to practice massage in Palo Alto. However, the chief of police may provide special consideration on a case-by-case basis to those massage technicians who can prove through documentation that they are currently enrolled in coursework associated with massage therapy and compliance of the 200 hour requirement is expected within a reasonable amount of time.

4.54.070 Massage technician application fee.

Any application for a permit to act as a massage technician shall be accompanied by a nonrefundable fee as set forth in the municipal fee schedule. A massage technician permit shall be renewed annually. The renewal fee shall be as set forth in the municipal fee schedule. Any person who applies for a permit to operate a massage establishment and who desires to act as a massage technician within said establishment shall not be required to furnish the information set forth in Section [4.54.080](#).

4.54.080 Application for massage technician permit.

(a) Any application for a permit to act as a massage technician shall be made with the chief of police. Within thirty working days following receipt of a completed application and LiveScan results, the chief of police shall either issue the permit, or mail a written statement of his reasons for denial thereof. If he takes neither action, the permit shall be deemed to be issued. The chief of police may request the applicant to furnish fingerprints when needed for the purpose of establishing identification. In addition to the requirements of [Chapter 4.04](#), the applicant shall furnish the following items:

- (1) Name, residence address and telephone number;
- (2) Social security number and driver's license number, if any;
- (3) Applicant's weight, height, color of hair and eyes;
- (4) Two recent passport photos of applicant;

- (5) Written evidence that the applicant is at least eighteen years of age;
- (6) Business, occupation or employment of the applicant for the three years immediately preceding the date of application;
- (7) The name and address of the establishment where the applicant is to be employed, and the name of the owner or operator of the same. Any massage technician granted a permit pursuant to this section must report a change in massage establishment employment within five days of said change;
- (8) The name and address of the “recognized school of massage” attended, the date attended, and a copy of the diploma or certificate of graduation awarded to the applicant, or other documentation showing the applicant has completed 200 hours.

4.54.090 Massage technician trainee.

(a) Any person desiring to obtain a permit to act as a massage technician trainee shall make an application to the chief of police. Within thirty working days following receipt of a completed application and having received LiveScan results, the chief of police shall either issue the permit, or mail a written statement of his reasons for denial thereof. If he takes neither action, the permit shall be deemed to be issued. A massage technician trainee permit shall be issued to any person who has fulfilled all the requirements of Section [4.54.080](#), except item (8), and who produces written proof that the applicant is currently enrolled in a “recognized school of massage”, as defined in this chapter; of the date the applicant enrolled in the recognized school of massage; and the scheduled date of graduation; and that the applicant has completed at least fifty hours of instruction and the date this instruction was completed; provided the applicant submits a letter signed by the owner or manager of a permitted massage establishment stating his immediate intent to employ the applicant to do massage as a trainee working under the direct supervision and control of a massage technician who has received a permit under the provisions of this chapter unless:

- (1) The applicant knowingly made a material misstatement in the application for the trainee permit; or
- (2) The applicant has, within five years immediately preceding the date of the filing of the application, been convicted in a court of competent jurisdiction of an offense involving conduct which requires registration under California Penal Code Section 290, or any violation of Sections 311 through 311.7, 313.1, 314, 315, 316, 318 or 647(a), 647(b), 647(d) or 647(h) of the California Penal Code or of any offense involving theft of property.

No fee shall be required of a massage technician trainee applicant. The trainee must at all times comply with the laws relating to massage establishments, and the failure to comply may render the trainee ineligible to obtain a massage technician permit.

Any massage technician trainee who, during the life of the trainee permit, completes the instruction required of a massage technician, shall be issued a massage technician permit upon payment of a massage technician application fee as set forth in the municipal fee schedule.

4.54.100 Appeal.

In the event a permit or permit application has been denied, the applicant shall proceed pursuant to the appeal and hearing provision in [Chapter 4.04](#).

4.54.110 Massage establishment facilities and operations requirements.

(a) Except as otherwise indicated, all massage establishments, including those certified by CAMTC, shall comply with the following facilities and operations requirements:

- (1) Massage establishments shall comply with all code requirements.
- (2) A minimum of one toilet and wash basin shall be provided in every massage establishment.
- (3) Cabinets or other covered space shall be provided for the storage of clean linen. Approved receptacles shall be provided for the storage of all soiled linen and paper towels.
- (4) Minimum ventilation shall be provided in accordance with the building code of the city. To allow for adequate ventilation in cubicles, rooms and areas provided for patrons' use, which are not serviced directly by required window or mechanical systems of ventilation, partitions shall be constructed so that the height of partition does not exceed seventy-five percent of the floor-to-ceiling height of the area in which they are located.
- (5) All plumbing and electrical installations shall be installed under permit and inspection of the building inspection department, and such installations shall be installed in accordance with the Uniform Building Code and the Uniform Plumbing Code.
- (6) The walls in all rooms where water or steam baths are given shall have a washable, mold-resistant surface.
- (7) All lavatories or wash basins shall be provided with hot and cold running water, soap and single-service towels in wall-mounted dispensers.
- (8) Security deposit facilities capable of being locked by the patron or a security bag that may be carried by the patron shall be available for the protection of the valuables of the patrons.

(9) Every portion of a massage establishment, including appliances, apparatus and personnel, shall be kept clean and operated in a sanitary condition.

(10) All massage establishments shall provide clean and sanitary towels, sheets and linens in sufficient quantity. Towels, sheets and linens shall not be used by more than one person. Reuse of such linen is prohibited unless the same has first been laundered. Heavy white paper may be substituted for sheets; provided, that such paper is used once for each person and then discarded into a sanitary receptacle.

(11) All walls, ceilings, floors, pools, showers, bathtubs, steam rooms and all other physical facilities for the establishment must be in good repair and maintained in a clean and sanitary condition. Wet and dry heat rooms, steam or vapor rooms, or steam or vapor cabinets, shower compartments and toilet rooms shall be thoroughly cleaned and disinfected each day the business is in operation. Bathtubs shall be thoroughly cleaned and disinfected after each use.

(12) Disinfecting agents and sterilizing equipment shall be provided for any instruments used in performing acts of massage and said instruments shall be disinfected and sterilized after each use.

(13) Pads used on massage tables shall be covered with durable, washable plastic or other acceptable waterproof material.

(14) (A) To protect patrons from potential health and sanitary hazards, all employees, massage technicians and massage technician trainees shall be clean and shall perform all services on the premises in full, clean outer garments.

(B) Exception. A massage technician may perform services wearing no clothing or wearing less than full outer garments when teaching a class gathered to learn the theory, practice, or work of massage, and when said class consists in part of massage by the technician or members of the gathered class.

The following items, (15) through (18), shall not apply to CAMTC certified establishments:

(15) Each service offered, the price thereof, and the minimum length of time such service shall be performed shall be posted or shall be available in a conspicuous public location in each massage establishment. All letters and numbers shall be capitals, and not smaller than 14 point font.

(16) (A) Massage establishments shall close and remain closed from eleven p.m. (11 p.m.) to nine a.m. (9:00 a.m.)

(B) After one year of operation a massage establishment may be exempted from the hours restrictions of this section by the chief of police upon a written request which details the factual reasons supporting good cause for the exemption. The chief of police,

in determining what constitutes good cause for this exemption from the hours restrictions, shall consider and weight the following factors:

- (i) The criteria outlined in Section [4.04.140](#) of [Chapter 4.04](#);
- (ii) The criteria outlined in Section [4.54.030](#) of this chapter;
- (iii) The impact which the massage establishment has had on the health, safety, and welfare of the local community, including, but not limited to, parking and traffic congestion;
- (iv) The massage establishment's compliance or noncompliance with all federal, state, and local laws, including, but not limited to, this municipal code.

If, upon review of those factors, the chief of police determines that good cause does exist for the requested exemption, the chief may then exempt the particular massage establishment from the hours restrictions of this section. However, in no event shall any massage establishment close later than two a.m. nor open earlier than six a.m.

- (C) The exemption from the hours restrictions of this section shall be subject to review and renewal annually at the same time as the renewal of the underlying permit and the same factual showing shall be made as that required for the initial exemption. The chief shall not grant an hours exemption unless said establishment has maintained the criteria specified in Section [4.54.110\(a\)\(16\)\(B\)](#).

(17) Every massage establishment and sole proprietor massage establishment shall keep written client records of the following: the date and hour of each service; the name, contact information and sex of each patron; the service provided, and the technician administering the service. This log may be inspected only pursuant to a court order. (Ord. 2833 § 1 (part), 1974)

(18) Off-premises Massage Prohibited. Except as otherwise provided, no person, , shall engage in any of the services permitted under this chapter at any place other than an establishment permitted pursuant to [Chapter 4.54](#).

4.54.120 Inspection by officials.

Any and all investigating officials of the city shall have the right to enter massage establishments from time to time during regular business hours to make reasonable inspections to observe and enforce compliance with building, fire, electrical, plumbing or health regulations. A warrant shall be obtained whenever required by law.

4.54.130 Business name.

No person permitted to operate a massage establishment shall operate under any name or conduct business under any designation not specified in the permit.

4.54.140 Business location change.

Upon a change of location of a massage establishment, an application to the chief of police shall be made, and such application shall be granted, provided all applicable provisions of this code are complied with and a change of location fee as set forth in the municipal fee schedule to defray, in part, the costs of investigation and report, has been paid to the city.

4.54.150 Sale or transfer of massage establishment interest.

A sale or transfer of any interest in a massage establishment, which interest would be reported as required in this chapter upon application for a massage establishment permit, shall be reported to the chief of police within ten days of such sale or transfer. The chief of police shall investigate any person receiving any interest in a massage establishment as a result of such sale or transfer, and if such person satisfies the requirements relating to massage establishment permit applicants, the existing permit shall be endorsed to include such person. A fee as set forth in the municipal fee schedule shall be paid to the city for the investigation by the chief of police necessitated by each such sale or transfer.

4.54.160 Display of permits, permits.

The owner or operator of a massage establishment shall display the massage establishment permit and the permit of each and every massage technician or massage technician trainee employed in the establishment in an open and conspicuous place on the premises or keep the permits together in a designated area, such that the permits are easily accessible for inspection. Passport-size photographs of permittees shall be affixed to the respective permits on display pursuant to this section. Home addresses of massage technicians and massage technician trainees need not be displayed. A fine for continued violation will be collected in an amount to be determined by resolution of the City Council.

4.54.170 Exemptions.

The provisions of this Chapter shall not apply to the following classes of individuals while engaged in the performance of the duties of their respective professions:

- (1) Physicians, surgeons, chiropractors, osteopaths or physical therapists who are duly permitted to practice their respective professions in the state of California;
- (2) Nurses registered under the laws of the state of California;

(4)Barbers and beauticians who are duly permitted under the laws of the state of California.

4.54.180 Grounds for denial, probation, and disciplinary action.

In addition to any provisions of this chapter, the grounds set forth in Section [4.04.140](#) shall apply to permits and permits required under this chapter. Any circumstances constituting grounds for denial shall also constitute grounds for revocation, suspension or disciplinary action.

4.54.190 Hearing.

Any permittee whose permit has been suspended or revoked shall proceed pursuant to the appeal and hearing provisions of [Chapter 4.04](#).

4.54.200 Application to existing establishments and technicians.

All operators of existing massage bath or health treatment establishments, and all persons engaged in giving massage, bathing and health treatments in the city upon the effective date of this chapter shall begin the application process and comply with all application and other requirements within sixty (60) days following the effective date of this chapter.

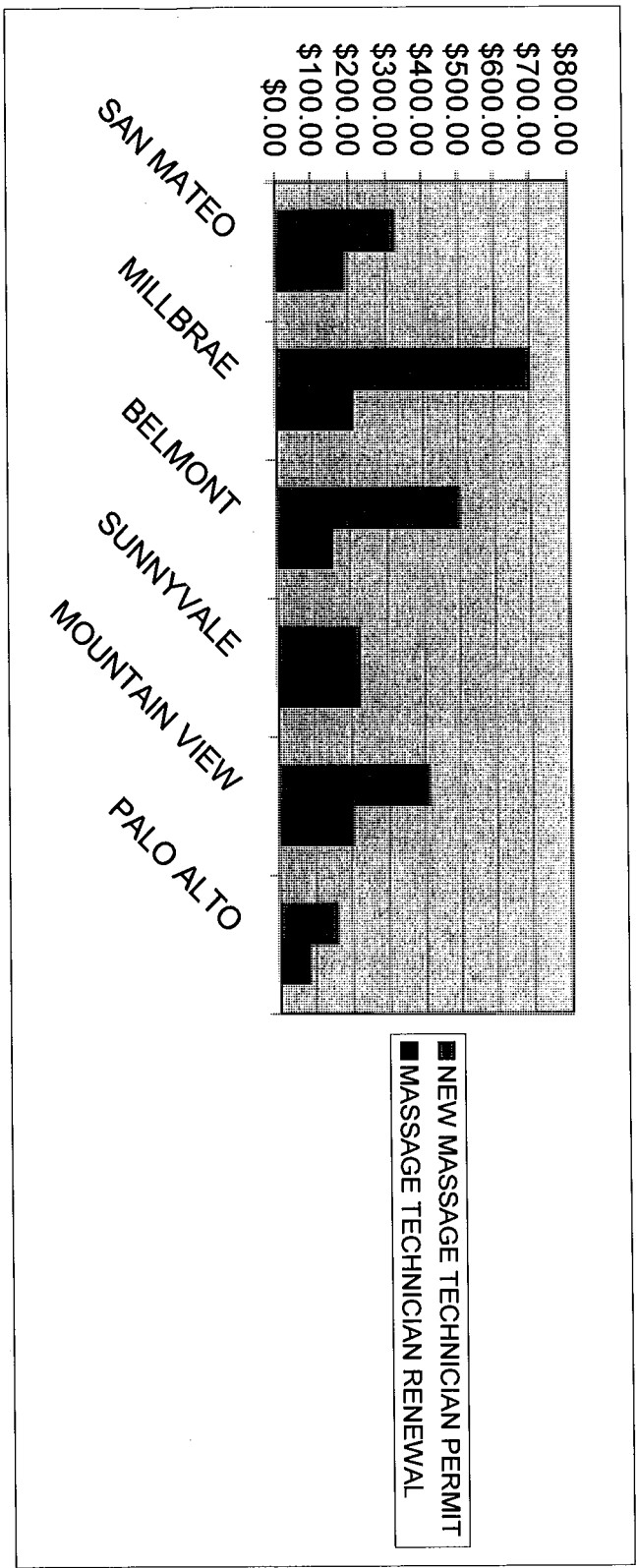
4.54.210 Application of other code provisions.

[Chapters 1.08 and 4.04](#) shall apply to the subject matter of this chapter in all respects, including those not specifically mentioned in this chapter.

LOCAL SURROUNDING CITIES MASSAGE TECHNICIAN RATES

| | SAN MATEO | MILLBRAE | BELMONT | SUNNYVALE | MOUNTAIN VIEW | PALO ALTO |
|-------------------------------|-----------|----------|----------|-----------|---------------|-----------|
| NEW MASSAGE TECHNICIAN PERMIT | \$323.00 | \$697.00 | \$500.00 | \$223.00 | \$409.00 | \$157.00 |
| MASSAGE TECHNICIAN RENEWAL | \$188.00 | \$209.00 | \$150.00 | \$223.00 | \$203.00 | \$81.00 |

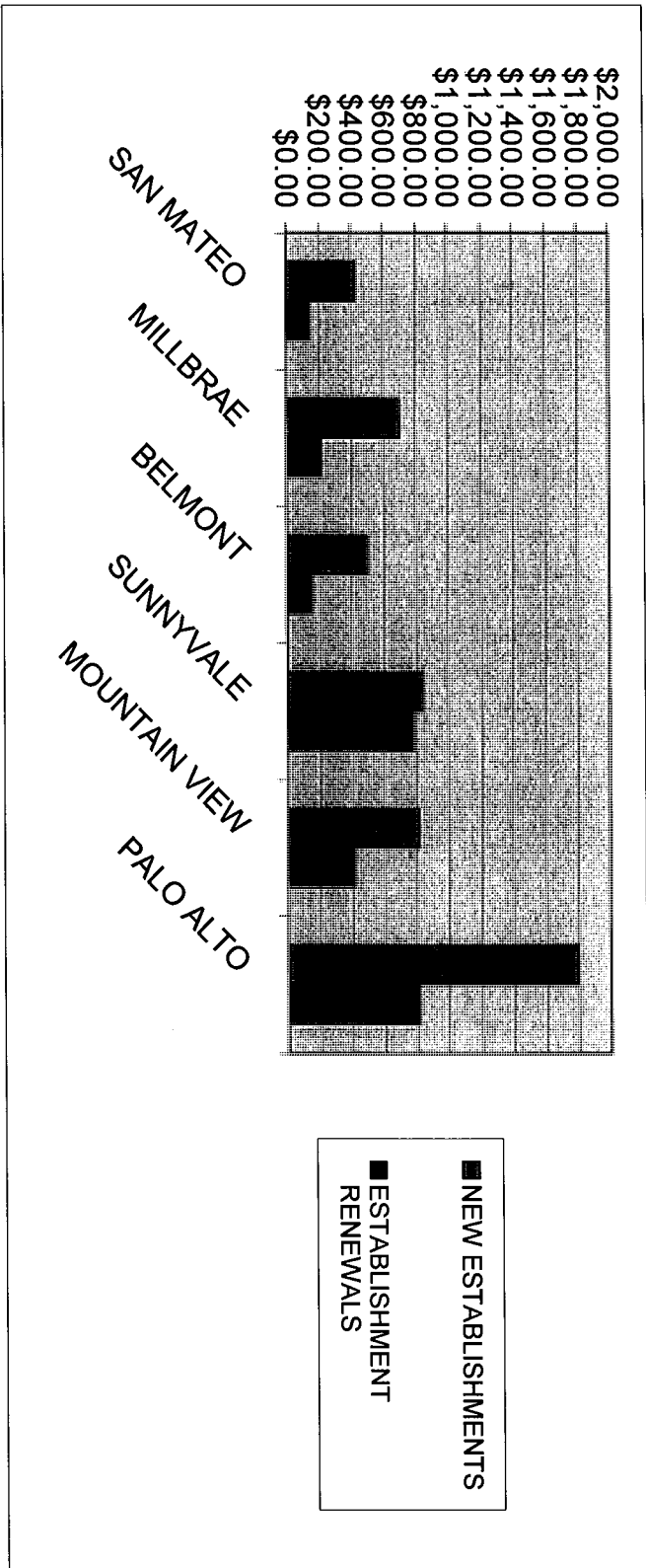
NEW MASSAGE TECHNICIAN PERMIT AVERAGE : \$385
 MASSAGE TECHNICIAN RENEWAL AVERAGE : \$176



LOCAL SURROUNDING CITIES MESSAGE ESTABLISHMENT RATES

| | SAN MATEO | MILLBRAE | BELMONT | SUNNYVALE | MOUNTAIN VIEW | PALO ALTO |
|------------------------|-----------|----------|----------|-----------|---------------|------------|
| NEW ESTABLISHMENTS | \$427.00 | \$697.00 | \$500.00 | \$841.00 | \$811.00 | \$1,790.00 |
| ESTABLISHMENT RENEWALS | \$142.00 | \$209.00 | \$150.00 | \$777.00 | \$409.00 | \$810.00 |

NEW MESSAGE ESTABLISHMENT AVERAGE : \$844
 MESSAGE ESTABLISHMENT RENEWAL AVERAGE : \$416



Minor, Beth

From: Lance Welsh [lance@welsh.com]
Sent: Monday, February 06, 2012 7:27 PM
To: Council, City
Subject: Massage Ordinance

CITY OF PALO ALTO, CA
CITY CLERK'S OFFICE

12 FEB -7 PM 1:57

Dear City Council,

Thank you for taking the time to read what must be volumes of email, on this and other issues. Please know that I'm another Palo Alto resident who is surprised to hear that we need reformed massage ordinances. As a resident for over 20 years, I have seen no evidence that there is a problem here that needs fixing. Especially when the cost of even a well-intentioned proactive law would put a burden on some establishments like Happy Feet.

I live in Baron Park and visit when work becomes stressful. It's wonderful to live nearby, and nothing against Watercourse Way or other high-end spas, but even if I could afford it, I'm glad to have the choice to not spend that much money. I've had nothing but good healthy clean service from Happy Feet and am proud to live in a community that hasn't gentrified so much as to wipe out these more affordable shops and services.

Please reconsider whether we need to make new laws for problems that don't exist, or at least consider making them with minimal harm to good businesses and our community. Perhaps I'm wrong - if there are problems and compelling reasons for new laws, please enlighten me.

Sincerely,

Lance Welsh
3885 Magnolia Drive
Palo Alto, CA 94306

--: Attachment H - Letters to Council re Massage Ordinance 020812 (2287 : Massage Ordinance Revision)

Teixeira, Barbara

From: Minor, Beth on behalf of Council, City
Sent: Wednesday, February 08, 2012 7:50 AM
To: Teixeira, Barbara
Subject: FW: Massage Ordinance Revision (PD) Agenda Item, February 14, 2012 Policy & Services meeting
Attachments: ARCB RAA Brochure 2012 1.6.12.pdf ~1..pdf; ARCB Palo Alto.pdf; California Statutes.pdf; Citrus Heights Exemption.pdf; RAC 2011 Brochure.pdf; Reflexology vs Massage (4).pdf; Palo Alto Ltr - Whitaker-Harvey.pdf; NIH NCCAM.doc.pdf

Hi Barb, This should also go with the massage ordinance report.

B-

From: Susan Mix [mailto:MixReflexology@comcast.net]
Sent: Tuesday, February 07, 2012 6:05 PM
To: Council, City
Subject: Massage Ordinance Revision (PD) Agenda Item, February 14, 2012 Policy & Services meeting

February 7, 2012

Palo Alto City Council
250 Hamilton Avenue
Palo Alto CA 94301

Re: Massage Ordinance Revision (PD) Agenda Item, February 14, 2012 Policy & Services meeting

As a representative of the Reflexology Association of California (RAC), I request time for myself and a few other professional reflexologists to speak against the issue of amending the Massage Ordinance to include reflexology under the massage regulations. A brief summary of information regarding professional reflexology and legislation pertaining to its practice is attached to this e-mail. Some of the attached documents reference other documents that we will bring to the meeting.

Sincerely,

Susan L. Mix
RAC Vice President
408-829-6249

Attachment H - Letters to Council re Massage Ordinance 020812 (2287 : Massage Ordinance Revision)

Reflexology is:

Reflexology is a non-invasive complementary practice involving the use of alternating pressure applied to the reflexes within the reflex maps of the body located on the feet, hands and outer ears.

A Typical Reflexology Session:

- Is performed on the feet, hands and outer ears.
- Only footwear is removed.
- Average session length is 60 minutes.

The Legitimate Reflexology Professional is:

- A graduate of a reflexology program consisting of at least 200 hours of training.
- Certified through a national certification board.
- Certified through an accredited vocational school.

Posted Credentials May Include:

- Diploma of Reflexology education.
- Certificate of Certification.
- Membership in RAA and the state reflexology association.

- Continuing Education Certificates.
- Code of Ethics and Business Standards.
- Whom to contact with a grievance.

History and Science:

The art and science of Reflexology is based on the work of three 20th century medical doctors and a physio-therapist

- Dr. William Fitzgerald (USA)
- Dr. Joe Shelby Riley (USA)
- Dr. Paul Nogier (France)
- Eunice Ingham (USA)

Reflexology is:

- Supported by over 300 global research studies.
- Funded by two research grants (of several million dollars each) by the National Cancer Institute.
- Recognized by the National Center for Complementary and Alternative Medicine as a separate integrative therapy.

© 2012 RAA/ARCB

Identifying the Legitimate Reflexology Practice



Ethics and Business Standards

An unethical, but growing trend in the USA is the operation of "reflexology parlors or studios" that front for operations of human trafficking and prostitution.

All professional reflexology organizations and legitimate reflexologists are opposed to the exploitation of humans and to human trafficking in any form.

Professional reflexologists adhere to a strict Code of Ethics and Business Standards set forth by national organizations, educational institutions, and state legislation.

Resources

For more information or to report a potential case of human trafficking, please contact your local law enforcement, or

National Human Trafficking Resource Center
1-888-373-7888
www.traffickingresourcecenter.com

Professional Organizations in the Reflexology Field

Both these Reflexology organizations are independent non-profit corporations governed by their own Board of Directors and work in cooperation with each other.



ARCB

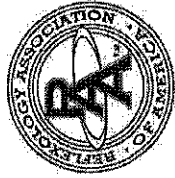
American Reflexology Certification Board

The primary aim of ARCB is to protect the public through certifying the competency of trained reflexology practitioners. To aid the public in locating ARCB certificants in their area it also provides a national referral directory through their website.

Established in 1991, ARCB is a non-profit, independent national testing agency. As such ARCB is not affiliated with any school, instructor, business, or association.

ARCB

303-933-6921
www.arcb.net



RAA

Reflexology Association of America

RAA, established in 1995, is a membership association open to reflexologists, reflexology schools, and to those who are outside the field, but wish to support reflexology.

RAA's primary goals include:

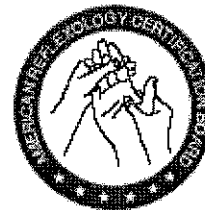
- Advancing its members' interests.
- Sponsoring a biennial conference.
- Acting as a national referral board for its member practitioners.
- Educating the public on reflexology and its benefits.
- Acting as a clearinghouse for information about reflexology to the federal government, the public and its membership.

RAA

980-234-0159
www.reflexology-usa.org



ARCB • PO Box 141553 • Grand Rapids MI 49514
 p - 303.933.6921 • f - 303.904.0460
 info@arcb.net • www.arcb.net



Michael Rainone
 Scarsdale, NY
 President

7 February 2012

Lucy Scarbrough
 Jackson, TN
 Vice President

To Whom It May Concern:

Janet O'Folain
 Laguna Niguel, CA
 Board Secretary

The challenge faced today is how to regulate and license reflexology businesses that are potentially doing harm without severely restricting the ethical professional practicing reflexologist as an integrative therapist while ensuring public safety.

Perry Dickinson
 Topeka, KS
 Treasurer

A properly trained and nationally certified reflexologist will have met competency standards. Educational standards are important so that harm does not occur; however, reflexology does not involve invasive techniques, pharmaceutical substances, or is it to be used as a diagnostic technique; therefore it is a low risk practice.

Mary Ann Stimmell
 Marshfield, WI
 Director

Nationally evidence of physical harm due to an incompetent reflexologist has never been reported. Furthermore, the National Center for Complementary and Alternative Medicine (NCCAM) has found those who seek out complementary therapies to be well educated. This in and of itself lends an element to public safety. The decision to seek reflexology is controlled by the client (self-referred) and well-educated clients are more likely to know when to seek legal recourse and have adequate resources to pursue damages.

Annalise Evenson
 Old Greenwich, CT
 Director

Sharon Vermeulen
 Grand Rapids, MI
 Administrative
 Secretary

Public welfare is served by consumers having broad access to reflexology and knowing that all service providers meet basic standards to perform their work. On the attached page is a list of suggested professional practitioner standards to be met allowing public safety.

Christine Issel
 Auburn, CA
 Legislative
 Consultant

ARCB is willing to meet with the committee to discuss how best to address the issues it is faced with if further information is required. For immediate response I may be contacted by e-mail at quantumreflexology@earthlink.net or directly by telephone at 530-887-1364.

Sincerely,

Christine Issel

Since 1991 setting the highest testing standards to which professional reflexologists aspire

Professional Practitioner Standards

Setting standards for public safety would include reflexologist providing:

- a. Proof of U.S. reflexology education of at least 200 hours for **each** practitioner (if not U.S. then some kind of proof of education).
- b. National certification with the American Reflexology Certification Board (ARCB). In this way the state, city and/or county do not have to evaluate educational backgrounds and conduct psychometrically valid certification exam testing. See attached brochure for testing prerequisites. The testing process often takes 18 months from submission of the application to grading of documentations. If a reflexologist has applied for testing, then a letter from ARCB stating the person is a candidate would suffice.
- c. Membership in professional association(s), the Reflexology Association of America (RAA) and/or the Reflexology Association of California (RAC). Membership also provides a system for grievances to be presented and resolved. ARCB, RAA & RAC investigate complaints and reprimand or otherwise discipline practitioners for a breach in the Code of Ethics and Business Practices.
- d. Proof of **practitioner** liability insurance – i.e., liability insurance policy number for **each** reflexologist.
- e. And required use of a Full and Fair Disclosure form as mandated by Statute 2053.5-6 of the California Business & Professions Code (Health Freedom of Access to CAM Therapies) which provides guidelines on how CAM therapy practitioners must present themselves.

2007 Profile of a Reflexologist

Based on the responses provided in the ARCB National 2007 Job Analysis Survey, the “typical” reflexologist is a **52 year old**, Caucasian female who is self-employed in reflexology and practices in a suburban area of New York. “Zoe” has been practicing for about 10 years, sees less than 10 clients per week and carries practice liability insurance. Although, Zoe conducts the majority of her sessions in a private practice at her home, she occasionally makes “outcalls” to her clients’ homes. Zoe’s sessions last about an hour.

For most, reflexology is a mid-life career change. In addition to her “formal” education, from which she has a four-year degree, Zoe’s initial reflexology training consisted of a 200 hour program. To date, she has at least 500 hours of training in reflexology. She likely gained the additional hours of training through attendance at the workshops and conferences held by the state, national and international associations of which she is a member.

During the course of her work, Zoe varies the pressure during her thumb and finger movements, uses circular pressure and avoids using her knuckles on the reflex points. She is careful to check with her clients intermittently throughout the session regarding their pressure preferences. She doesn’t use tools, but occasionally uses lubricants during her work. Zoe always works on the feet and increasingly is incorporating work on the hands into her sessions. She is less apt to work on the ears.

Following a code of ethics and business standards, Zoe doesn’t provide psychological counseling, but does engage in active listening. She will often give her clients homework for self-help and will refer them to other health care providers on an “as-needed” basis. Zoe follows a combination of the stress reduction, medical and energy models of reflexology, but also believes that there are contraindications that always have to be considered.

California Statutes of BUSINESS AND PROFESSIONS CODE

Chapter 5 – Medicine - SECTION 2053.5-6 (AKA Health Freedom of Access of CAM Therapies)

2053.5. (a) Notwithstanding any other provision of law, a person who complies with the requirements of Section 2053.6 shall not be in violation of Section 2051 or 2052 unless that person does any of the following:

- (1) Conducts surgery or any other procedure on another person that punctures the skin or harmfully invades the body.
 - (2) Administers or prescribes X-ray radiation to another person.
 - (3) Prescribes or administers legend drugs or controlled substances to another person.
 - (4) Recommends the discontinuance of legend drugs or controlled substances prescribed by an appropriately licensed practitioner.
 - (5) Willfully diagnoses and treats a physical or mental condition of any person under circumstances or conditions that cause or create a risk of great bodily harm, serious physical or mental illness, or death.
 - (6) Sets fractures.
 - (7) Treats lacerations or abrasions through electrotherapy.
 - (8) Holds out, states, indicates, advertises, or implies to a client or prospective client that he or she is a physician, a surgeon, or a physician and surgeon.
- (b) A person who advertises any services that are not unlawful under Section 2051 or 2052 pursuant to subdivision (a) shall disclose in the advertisement that he or she is not licensed by the state as a healing arts practitioner.

2053.6. (a) A person who provides services pursuant to Section 2053.5 that are not unlawful under Section 2051 or 2052 shall, prior to providing those services, do the following:

- (1) Disclose to the client in a written statement using plain language the following information:
 - (A) That he or she is not a licensed physician.
 - (B) That the treatment is alternative or complementary to healing arts services licensed by the state.
 - (C) That the services to be provided are not licensed by the state.
 - (D) The nature of the services to be provided.
 - (E) The theory of treatment upon which the services are based.
 - (F) His or her educational, training, experience, and other qualifications regarding the services to be provided.
 - (2) Obtain a written acknowledgment from the client stating that he or she has been provided with the information described in paragraph (1). The client shall be provided with a copy of the written acknowledgement, which shall be maintained by the person providing the service for three years.
- (b) The information required by subdivision (a) shall be provided in a language that the client understands.
- (c) Nothing in this section or in Section 2053.5 shall be construed to do the following:
- (1) Affect the scope of practice of licensed physicians and surgeons.
 - (2) Limit the right of any person to seek relief for negligence or any other civil remedy against a person providing services subject to the requirements of this section.

CODE OF ORDINANCES
City of
CITRUS HEIGHTS, CALIFORNIA

Codified through
Ordinance No. 2011-003, adopted March 24, 2011.

Chapter 22 – Businesses Article VIII – Massage Establishments

Sec. 22-600. - Title.

Sec. 22-601. - Authority.

Sec. 22-602. - Purpose and intent.

Sec. 22-603. - Application of article to persons engaged in massage as of the effective date of this article; grandfather clause.

Sec. 22-604. - Construction of this article with other city codes.

Sec. 22-605. - Definitions.

Sec. 22-606. - Exemptions from article.

Secs. 22-607—22-609. - Reserved.

Sec. 22-600. - Title.

This article shall be known as the "Massage Establishment Licensing Law of the City of Citrus Heights."

Sec. 22-605 Definitions

The definitions contained in this section shall govern the construction of this article. Words contained in this article but not defined by this section shall be construed according to the ordinary and common usage of the word, taking into consideration the context of the language and the definition of the word as provided in a standard English language dictionary.

Applicant means any person who applies for a license as required by this article. In the event the applicant is a non-natural person (e.g. a corporation), the term applicant shall also include a natural person legally authorized to act on behalf of the applicant and the person submitting the application to the city pursuant to this article.

Approved national massage organization or association means an organization recognized by the City of Citrus Heights, specifically the: American Massage Therapy Association (AMTA) or the Associated Bodywork and Massage Professionals (ABMP), or a similar organization which requires: Completion of at least 100 hours of massage training or experience; possession of practitioner's liability insurance coverage in the minimum amount of \$2,000,000.00 per event; adherence to a code of ethics; and renewal of an annual membership.

Certificate or MTO certificate means the certificate, or conditional certificate, issued by the massage therapy organization to massage therapists, pursuant to Business and Professions Code § 4601(c) and to massage practitioners pursuant to subdivision 4601(b), or 4604(a), 4604(c), that

entitles the holder to practice massage. When used in this article, "MTO certification" means a person who has a valid, unexpired MTO certificate.

Certificate holder means a person who has an valid, unexpired certificate from the MTO to practice massage, who is in good standing with the MTO.

Certified massage establishment mean a massage establishment that employs or uses only massage therapists with MTO certification to perform massage services.

Certified sole proprietorship means a sole proprietorship where the owner has received MTO certification and is the only person employed by that business to provide massage services.

Chief of police means the Citrus Heights Police Department Chief of Police or his/her designee.

City means the City of Citrus Heights.

City clerk means the City Clerk of the City of Citrus Heights or his/her designee.

City council means the City Council of the City of Citrus Heights.

Continuing education means a class or seminar in massage therapy or related educational subjects, including classes related to anatomy and physiology, contraindications, health and hygiene, provided by a recognized massage school, facility or organization approved by a national massage organization or association, or a state-approved school, or any other certification organization recognized by the finance director.

Employee means a person who performs any massage service on the premises of a massage establishment on a full-time, part-time, or contract basis, whether or not the person is denominated an employee, independent contractor, agent or otherwise and whether or not the person is paid a salary, wage or other compensation by the massage establishment.

Finance director means the City of Citrus Heights Finance Director or his/her designee.

Home occupation massage therapist means a massage therapist who engages in the business of massage therapy in his/her home or residence, or who engages in massage therapy in both his/her home or residence and in a massage establishment.

Licensee means any person operating or maintaining a massage establishment pursuant to a massage establishment license.

Massage means any method of pressure on, or friction against, or stroking, kneading, rubbing, tapping, pounding, vibrating, or stimulating of the external parts of the human body below the neck with the hands or other parts of the body, with or without the aid of any mechanical or electrical apparatus or appliances, or with or without supplementary aids such as rubbing alcohol, liniments, antiseptics, oils, powder, creams, lotions, ointments or other similar preparations commonly used in the practice of massage.

Massage establishment means a fixed place of business where any person engages in or carries on massage, as defined by this section, in exchange for any form of consideration.

Massage establishment license or *license* means a license issued by the finance director and required pursuant to this article, to operate or maintain a massage establishment within the city, issued to the massage establishment owner.

Massage therapist means any person who gives or administers a massage to another person, for any form of consideration whatsoever. Unless otherwise specified massage therapist includes those persons with MTO certification and those individuals classified by his/her school of education as bodyworkers, bodywork therapists, massage practitioner, bodywork practitioner or massage technicians.

Massage therapist permit or *permit* means a permit issued by the city to a person, which authorizes the person to engage in the business of massage therapy within the city.

Massage therapy organization or "MTO" means the nonprofit massage therapy organization established pursuant to Business and Professions Code § 4600 et seq. that has the authority to issue certificates to qualified massage therapists and massage practitioners.

Off-premises massage therapist means massage therapists who provide off-premises massage services and who are self-employed and/or who contract with or work for a business other than a massage establishment. Massage therapists who conduct massage as a home occupation are engaged in off-premises massage therapist businesses.

Permittee means the person issued a massage therapist permit pursuant to this article.

Person means any individual, partnership, firm, association, joint stock company, corporation or combination of individuals of whatever form or character.

Recognized massage school means a facility that (1) teaches the theory, ethics, practice, profession or work of massage; 2) requires a resident course of study before the student shall be furnished with a diploma or a certificate of graduation from such school or institution of learning following the successful completion of such course of study or learning; and 3) meets the minimum standards for training and curriculum in massage and related subjects and that was either recognized by the Bureau of Private Postsecondary and Vocational Education pursuant to former Section 94739 of the California Education Code prior to July 1, 2007, and on the date the received his/her certificate, or is recognized by the department of consumer affairs, by an institution accredited by the Accrediting Commission for Senior Colleges and Universities or the Accrediting Commission for Community and Junior colleges of the Western Association for Schools and Colleges and that is one of the following: (a) a public institution, (b) an institution incorporated and lawfully operating as a nonprofit public benefit corporation under the state of California laws, and that is not managed by an entity for profit; (c) a for-profit institution; (d) an institution incorporated that does not meet all of the criteria in subparagraph (b) that is incorporated and lawfully operating as a nonprofit public benefit corporation, that has been continuously operating since April 15, 1997; (d) a college or university of the state of higher

education system, as defined in Education Code § 100850; or (e) a school of greater or equal training that is approved by the corresponding agency recognized by the U.S. Department of Education. Schools or institutions of learning offering a correspondence course not requiring actual attendance shall not be deemed a recognized massage school. The applicant shall provide the documentation necessary, to the satisfaction of the finance director, to provide proof that his/her school is a recognized massage school.

Reflexology means a non-invasive complementary modality involving the use of alternating pressure applied to the reflexes within the reflex maps of the body located on the feet, hands, and outer ears.

Responsible person means the person designated by a partnership, firm, association, joint stock company, corporation, limited liability corporation, to be responsible for the operation of the massage establishment. The responsible person must meet the qualifications under this article to receive a massage therapist permit from the city, including the educational requirements, and he/she must also provide documentation to the city evidencing that the corporation, partnership or entity that owns the massage establishment has designated him/her as the responsible person.

Specified anatomical areas means, less than completely and opaquely covered: human genitals, public regions, buttocks, or female breasts below a point immediately above the top of the areola, and human male genitals in a discernibly turgid state, even if completely and opaquely covered.

(Ord. No. 2008-10, § 1, 5-8-2008; Ord. No. 2009-005, § 1, 12-10-2009)

Sec. 22-606 Exemptions from article

This article shall not apply to the following classes of individuals and, except as provided in subsections (4) and (5) below, a massage establishment license or massage therapist permit shall not be required of such persons while engaged in the performance of the duties of their respective professions, but such persons must comply with the sanitation and decency requirements of this article:

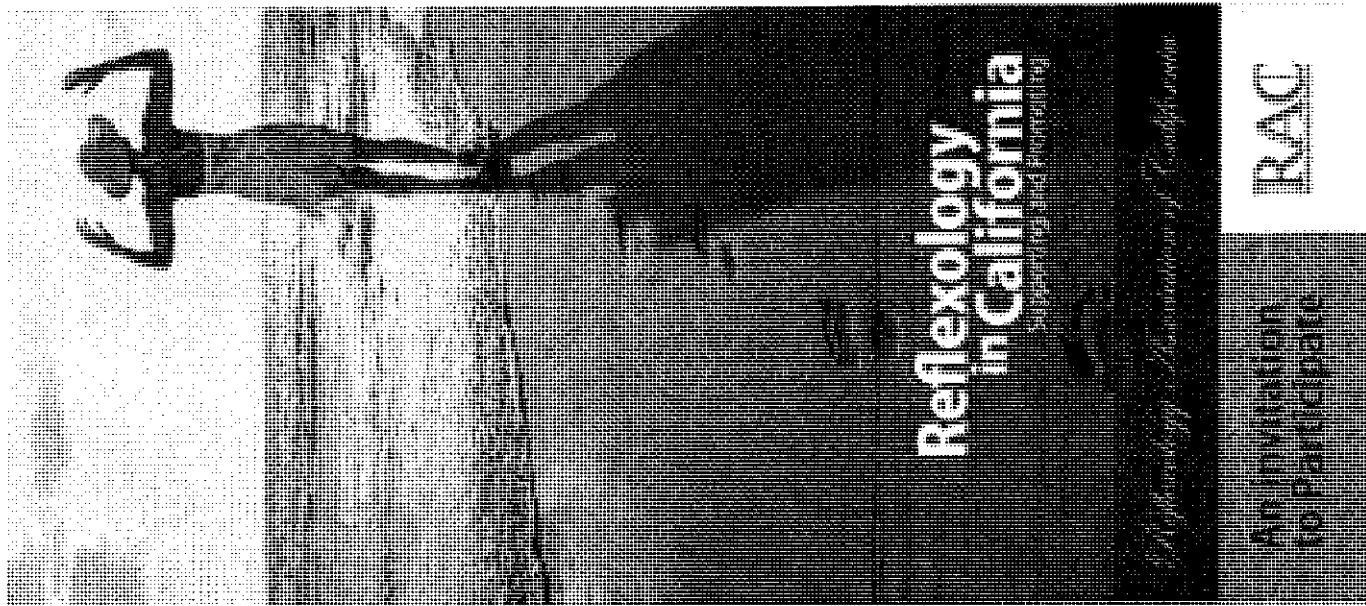
- (1) Physicians, surgeons, nurses, chiropractors, osteopaths, acupuncturists, naturopathic doctors and physical therapists who are duly licensed to practice their respective professions in the state, and massage therapists working under the direct supervision of such duly licensed physicians, surgeons, chiropractors, osteopaths, acupuncturists, naturopathic doctors and physical therapists;
- (2) Trainers of any amateur, semiprofessional or professional athlete or athletic team;
- (3) Hospitals, nursing homes, or persons working in any such establishments;
- (4) Barbers or cosmetologists lawfully carrying out their particular occupation or business, and holding a valid, unrevoked license or certificate of registration issued by the State of California, and where massage comprises not more than 25 percent of the square footage of the establishment; however, any massage therapist engaged in massage at such establishment shall be required to obtain a massage therapist permit;

(5) Athletic clubs or fitness facilities, where such facility is designed and equipped for indoor sports, exercise, or physical education and where massage comprises not more than ten percent of the square footage of the establishment shall not be required to obtain license pursuant to this article; however, any massage therapists engaged in massage at such establishment shall be required to obtain a massage therapist permit.

(6) A recognized school of massage which: (i) teaches the theory, ethics, practice, profession and work of massage; (ii) requires a residence course of study to be given before the student is furnished with a diploma or certificate of learning or completion; and (iii) has been approved pursuant to Education Code § 94915, or, if said school is not located in California, has complied with the standards commensurate with those specified in Education Code § 94915.

(7) Reflexologists performing **reflexology**; however, any reflexologist engaged in massage shall be required to obtain a massage therapist permit, unless he/she has an MTO certificate.

(Ord. No. 2008-10, § 1, 5-8-2008; Ord. No. 2009-005, § 2, 12-10-2009)



**Reflexology
in California**
Supporting and Promoting

California Reflexology Association, Inc. (CRA) is a 501(c)(3) non-profit organization.

**Application
to Participate**

RAC

RAC

**P.O. BOX 4286
Lakewood, CA 90711**



Phone: 310-499-6269 Fax: 310-701-4730 e-mail: rac@reflexology.org www: www.reflexology.org

**From us to you,
Helping you**

Along the way

Professional reflexology is an important part of your health care.

Reflexology can help you feel better, live longer, and enjoy life more fully.

Reflexology is a natural, non-invasive, and safe way to improve your health.

Reflexology can help you feel better, live longer, and enjoy life more fully.

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www.reflexology.org

Your Impact as a Member of RAC

MAKING YOUR VOICE HEARD

There are thousands of reflexology schools, but the reflexology school you choose will make a difference in your professional growth and success. RAC is the only school that has an international governing body. It's how we make a difference.

Help shape the future

When you join RAC, you are not just a student, you are a future leader. You will have the opportunity to shape the future of reflexology through your participation in our programs, our research, our projects, our committees, our advisory boards, our committees, our advisory boards, our committees, our advisory boards.

Strengthen Community

Join the ranks of our members and help us create a strong, unified community of reflexology professionals. We will support your growth and success through our programs, our research, our projects, our committees, our advisory boards, our committees, our advisory boards.

Grow your practice

Join our ranks and expand your professional growth and success. We will support your growth and success through our programs, our research, our projects, our committees, our advisory boards, our committees, our advisory boards.

How to Join

Our mission is to assist each member to realize their vision, bringing our community together through shared activities and enhancing our profession as a whole through education, communication and action.

We make it easy for you to get started in what is truly your Association:

Go to www.Reflexology-CA.org to apply for membership online, or phone us at (310) 899-6289 to request an application by mail.

While on the website don't forget to check out the many member benefits!

Professional Membership

You qualify when you provide proof of either a 200-hour reflexology training school certification, or national board certification.

Annual Professional Dues \$75

Associate Membership

Associate membership are available to reflexology students, accredited reflexology schools, to private business and individuals.

Annual Associate Dues \$50

Unique Characteristics of Reflexology & Massage

Though Reflexology and Massage have touch in common there are several important differences between the two disciplines

REFLEXOLOGY

Dr. William Fitzgerald
(1872-1942)

Reflexology is the application of specific pressures to reflex points in the hands and feet

The extremities. From the ankles and wrists distally to the tips of the toes and fingers

There are zones and reflex areas in the feet and hands corresponding to all body parts. Reflexology works through the nervous system

40+ books solely on reflexology
Separate Reflexology schools, associations--local, state national, international, & a national certification body

Alternating pressure
Thumb walking
Finger walking
Hook and back-up
Rotation on a reflex

Hands, feet, & possibly ears
Only shoes & socks removed

National certification requires a minimum of 200 hours of study & documented practice of reflexology

Scientific research studies conducted in USA, Australia, Denmark, China and elsewhere proving effectiveness of reflexology

MASSAGE

Per Henrik Ling
(1776-1839)

Massage is the systematic and scientific manipulation of the soft tissues of the body

Entire body

Stroking restores metabolic imbalance within the soft tissue. Massage works through the musculature

Books on massage
Separate massage schools, associations & a national certification body

Tapping
Kneading
Stroking
Friction
Shaking

To the entire body
Client undresses

Educational programs range from 100-1,000 hours often incorporating other touch modalities

Worldwide research studies documenting the therapeutic value of massage

© 1996 American Reflexology
Certification Board

History
(Modern Originator)

Definition

Scope of Practice

Basic Premise

Body of Knowledge

Techniques & Terminology

Application of Techniques

Education

Research

HEALTH & WELLNESS REFLEXOLOGY

7 February 2012

To Whom It May Concern:

I am a reflexologist working with the Whitaker Wellness Clinic Medical Institute. Reflexology has been used at this internationally recognized clinic for nearly 20 years. The professional application of reflexology and massage as *distinct forms* of complementary therapies are offered to patients among other doctor ordered procedures. As separate disciplines they utilize different techniques and philosophical approaches resulting in outcomes unique to each modality. Reflexology works primarily through the nervous system versus the soft tissue.

Reflexology has been billed through CAM PPO of America, Inc. a credentialed national alternative medicine network of providers. CAM PPO maintains an exclusive focus on building a comprehensive, holistic medicine network, ensuring that employees of Parker Hannifin Engineering in our area, with 10,000 covered members, for over 20 years have access to qualified CAM practitioners. With CAM providers in a variety of specialties and extensive online educational resources for members, CAM PPO of America, Inc. encourages CAM use, promoting health and wellness by identifying and credentialing the most qualified CAM practitioners and makes their services available at an affordable cost to patients.

It would be a disservice to regulate reflexology under the massage. The issue before you is complex and hopefully working together we can come up with a solution that honors the business owner, reflexologists, and massage therapists while protecting public safety.

Sincerely,

Paul Harvey, C.R.
Whitaker Wellness Institute



Attachment H - Letters to Council re Massage Ordinance 020812 (2287 : Massage Ordinance Revision)

Our Mission

We sponsor and conduct rigorous scientific research. Since NCCAM became an NIH center in 1999, we have funded more than 2,200 research projects at scientific institutions across the United States and around the world.

We train CAM researchers. To help build the CAM scientific enterprise, we support training for new researchers as well as encourage experienced researchers to study CAM.

We share news and information on CAM research. We provide timely and accurate information so the public and health-care providers can make the most informed decisions about CAM use. We provide information in many ways, including through our Web site, information clearinghouses, fact sheets, lectures, continuing medical education programs, and publication databases.

We support the integration of proven CAM therapies. NCCAM's research helps the public and health professionals understand which CAM therapies have been proven to be safe and effective.

Why do people use CAM?

Millions of Americans use CAM for a variety of health concerns and for general well-being. According to a recent survey by the U.S. Centers for Disease Control and Prevention, American adults use CAM most commonly for pain conditions, particularly back, neck, or joint pain, or headache. CAM therapies are also used for cholesterol, head or chest colds, or insomnia. In children, CAM use is most common for back or neck pain, hyperactivity disorder, and insomnia are also common conditions that prompt CAM use in children.

U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES

National Institutes of Health
National Center for Complementary
and Alternative Medicine



To find out more about CAM or NCCAM,
call our clearinghouse or visit our Web site at
nccam.nih.gov.

NCCAM Clearinghouse

Toll-free in the U.S. 1-888-644-6226

TTY 1-866-464-3615

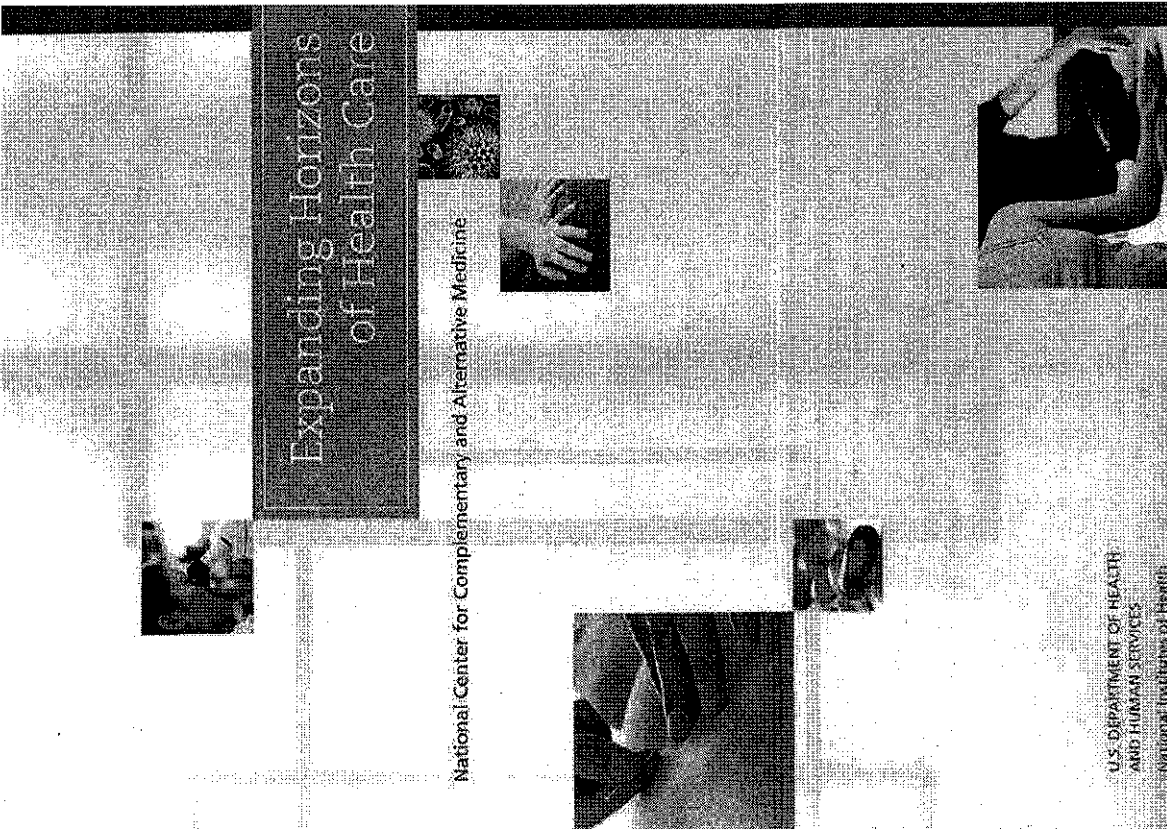
(for people with a hearing or hearing loss)

NCCAM PUBLICATION #01-16-8477-2009A02

**Expanding Horizons
of Health Care**

National Center for Complementary and Alternative Medicine

U.S. DEPARTMENT OF HEALTH
AND HUMAN SERVICES
National Institutes of Health





tai chi

dietary supplements
acupuncture

chiropractic manipulation

massage
meditation

traditional Chinese medicine



These are just some of the many forms of complementary and alternative medicine (CAM)—health care approaches, practices, and products that come from outside of conventional medicine as practiced in the United States.

Some CAM therapies go back hundreds—if not thousands—of years. Others have come into practice more recently. Many have their roots in cultures and traditions from around the world.

Millions of Americans use CAM therapies—approximately 38 percent of adults and 12 percent of children. And they spend \$34 billion per year out-of-pocket on CAM products and practices.

While there is scientific evidence for some CAM therapies, people often turn to CAM with little-reliable information to guide their decisions about what is and is not safe and effective. Studies are needed to answer important questions: Does this therapy work? If so, for which health conditions? How does it work? Is it safe?

The National Center for Complementary and Alternative Medicine—or NCCAM—is working to answer these questions through scientific methods and state-of-the-art technologies.

NCCAM is 1 of the 27 institutes and centers that make up the National Institutes of Health, a part of the U.S. Department of Health and Human Services. NCCAM is the federal agency leading scientific research into CAM.



Understanding CAM

Complementary medicine is used together with conventional medicine.

Alternative medicine is used in place of conventional medicine.

Integrative medicine combines conventional medicine with proven CAM therapies.

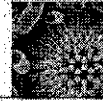
CAM therapies are often grouped into broad categories such as natural products, manipulative and body-based practices, and mind-body medicine. Although these categories are not formally defined, they are useful for discussing CAM practices.

Natural products and dietary practices include taking dietary supplements such as vitamins, minerals, and herbs, as well as the use of probiotics, special diets, and functional foods.

Manipulative and body-based practices involve manipulating or moving one or more body parts. Examples include massage, chiropractic care, osteopathic manipulation, and reflexology.

Mind-body medicine focuses on ways to harness and manipulate emotional, mental, social, spiritual, and behavioral factors to affect a person's health. Examples include meditation, hypnosis, and yoga.

The NCCAM Web site includes a special section for health care providers with evidence-based information on CAM, including practice guidelines, continuing medical education, clinical trials, databases, and other resources. www.nccam.nih.gov/health/providers/





City of Palo Alto

Policy and Services Committee Staff Report

(ID # 2547)

Report Type: Meeting Date: 2/14/2012

Summary Title: Labor Guiding Principles

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From: City Manager

Lead Department: Human Resources

This item is a late packet delivery.

Prepared By: Elizabeth Egli, Administrative Assistant

Department Head: Sandra Blanch, Interim Director, Human Resources
Department

City Manager Approval:



James Keene, City Manager

